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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1963

No. 100

DION TYRONE DIAMOND, PETITIONER,

vs.

LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF LOUISIANA

PETITION FOR CERTIORARI FILED APRIL 3, 1963
CERTIORARI GRANTED MAY 27, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 100

DION TYRONE DIAMOND, PETITIONER,

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LOUISIANA.

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[fol. 1]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917

(CM)

INFORMATION—Filed March 8, 1962

Alex W. Wall, Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that Dion Tyrone Diamond, late of the Parish of East Baton Rouge, on the thirtieth (30th) day of January and the thirty-first (31st) day of January in the year of our Lord One Thousand Nine Hundred and Sixty-Two (1962) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, unlawfully did violate L.R.S. 14:103 in that he, not a student of Southern University, did enter upon the premises of Southern University and there engage in and encourage students of Southern University to hold unruly, unauthorized demonstrations on the Campus and did lead and encourage said students to march through the University buildings while classes were being conducted and did encourage said students to boycott and leave the classes in such manner as would foreseeably disturb and alarm the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Alex Wall, Assistant District Attorney, Nineteenth Judicial District of Louisiana.

J. Jones & Sons

WITNESSES:

[fol. 3]

DIVISION "A"

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Number 42,917

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

MOTION TO QUASH—Filed March 23, 1962

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

Now into Court, through undersigned Counsel, comes Dion Tyrone Diamond, made defendant in the above numbered and entitled cause, who now withdraws his plea of Not Guilty previously entered in this cause for the purpose of filing this "Motion to Quash," and moves to quash the "Bill of Information" in the cause hereof, for the following reasons, to-wit:

—1—

That the alleged charges contained in the information amount to a multiplicity of charges against this defendant for alleged acts growing out of the same incident or alleged occurrence, and that said alleged acts could only constitute a single crime, if any at all, and that, said information should be quashed.

—2—

That LSA-R.S. 14:103 of 1950, as amended, should be declared void for vagueness, in that, said Statute is so vague on its face that one cannot reasonably be expected

to know what conduct is prohibited which could form the basis for a criminal prosecution.

[fol. 4]

—3—

That said Statute is so vague in its application as to violate the due process clause to the Fourteenth Amendment to the Constitution of the United States of America.

—4—

That while the defendant is being criminally prosecuted for "Disturbing the Peace," there was not a disturbance as such, within the already developed body of the law of Louisiana defining the crime.

—5—

That the said Statute, LSA-R.S. 14:103 of 1950, as amended, is being unconstitutionally applied, because the defendant, a member of the Negro race has been heretofore engaged in activities protesting racial segregation and had lately come to Southern University to resume his collegiate work there as a student; that when he attempted to speak out in the cause of justice and freedom, he was arrested and jailed.

—6—

That the use of the criminal processes of the State of Louisiana in such a manner and in such a situation as described in Article 5 of this motion denies and deprives the defendant of his rights, privileges, immunites and liberties guaranteed to him by the due process and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States of America, of which he is a citizen.

—7—

That the said Bill of Information is insufficient to charge a crime under the provisions of LSA-R.S. 14:103 of 1950, as amended, except that the Statute be unconstitutional

under the Constitution of the State of Louisiana and, as applied, violative of freedom of speech and assembly guaranteed to defendant by the First Amendment to the Constitution of the United States of America and a denial of due process and equal protection of the laws clauses as guaranteed to defendant by the Fourteenth Amendment to the Constitution of the United States of America, of which he is a citizen.

[fol. 5] Wherefore, your defendant, Dion Tyrone Diamond, prays that this "Motion to Quash" be maintained and that the said Bill of Information as to him, and as far as he is concerned, be declared null and void, and that he be discharged therefrom.

Mover further prays for all orders necessary, and for general and equitable relief in the premises.

Attorneys for Defendant:

Johnnie A. Jones;

Murphy W. Bell, 971 South 13th Street, Baton Rouge, Louisiana,

By: Johnnie A. Jones.

Of Counsel: Jack Greenberg, 10 Columbus Circle, New York 19, New York.

Duly sworn to by Dion Tyrone Diamond, jurat omitted in printing.

[File endorsement omitted]

[fol. 6]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,612

CM

INFORMATION—Filed February 13, 1962

Alex W. Wall, Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that Dion Tyrone Diamond, late of the Parish of East Baton Rouge, during the period commencing January 29th. through February 1st. in the year of our Lord One Thousand Nine Hundred and Sixty-Two (1962) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, unlawfully violated LRS 14:103.1 in that under circumstances such that a breach of the peace might have occurred thereby did refuse to leave the premises of Southern University when requested so to do by duly authorized personnel of Southern University, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Alex Wall, Assistant District Attorney, Nineteenth Judicial District of Louisiana.

[fol. 6a] [File endorsement omitted]

(See opposite) ☞

Klesmon Thompson. S.O.

Mercy Jackson
Le Dell Jones. Sou. Univ.

WITNESSES:

William Pass, Campus Security
Southern University

Willie Harris
Campus Security, Southern Univ.

Dean M. L. Harvey, Dean of Stud
Southern University

J. J. Hedgemon, Registra
Southern University

Dean U. S. Jones
Dean f Men
Southern University

Benjamin Kraft
Chief of Campus Security
Southern University

[fol. 7]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,615

CM

INFORMATION—Filed February 13, 1962

Alex W. Wall, Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that Dion Tyrone Diamond, late of the Parish of East Baton Rouge, during the period commencing January 29th. through February 1st. in the year of our Lord One Thousand Nine Hundred and Sixty-Two (1962) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, unlawfully violated LRS 14:103 in that he did hold unlawful assemblies in such a manner as would foreseeably alarm and disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Alex Wall, Assistant District Attorney, Nineteenth Judicial District of Louisiana.

[fol. 7a] [File endorsement omitted]

(See opposite) ☞

WITNESSES:

[fol. 8]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,616

CM

INFORMATION—Filed February 13, 1962

Alex W. Wall, Assistant District Attorney of the Nineteenth Judicial District of the State of Louisiana, who, in name and by the authority of said State, prosecutes in this behalf, in proper person, comes into the Nineteenth Judicial District Court of the State of Louisiana, in the Parish of East Baton Rouge, and gives the said Court here to understand and be informed that Dion Tyrone Diamond, late of the Parish of East Baton Rouge, during the period commencing January 29th. through February 1st. in the year of our Lord One Thousand Nine Hundred and Sixty-Two (1962) with force of arms, in the Parish of East Baton Rouge, aforesaid, and within the jurisdiction of the Nineteenth Judicial District Court of Louisiana in and for the Parish of East Baton Rouge, then and there being, unlawfully violated LRS 14:103 in that he interrupted lawful assemblies of people in such a manner as would foreseeably alarm and disturb the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

Alex Wall, Assistant District Attorney, Nineteenth Judicial District of Louisiana.

[fol. 8a] [File endorsement omitted]

(See opposite) ☞

WITNESSES:

[fol. 9]

DIVISION "A"

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Number 42,917

[Title omitted]

APPLICATION FOR BILL OF PARTICULARS—
Filed March 23, 1962

Now into this Honorable Court, though his undersigned counsel, comes Dion Tyrone Diamond, made defendant in the above entitled and numbered cause, and before arraignment, pleads that he is unable to properly prepare his defense herein, until he is furnished with a Bill of Particulars upon the following, to-wit:

—1—

State the names and addresses of the students of Southern University that the accused allegedly encouraged to hold unruly and unauthorized demonstrations on the campus of Southern University.

—2—

State the names and addresses of the students the accused allegedly led and encouraged to march through the University buildings while classes were being conducted.

—3—

State the names and addresses of the students the accused allegedly encouraged to boycott and leave classes.

—4—

Give the names of the classes and the names and addresses of the instructors of the classes which the accused allegedly encouraged said students to boycott and leave.

[fol. 10] Wherefore, your defendant, Dion Tyrone Diamond, prays that the State of Louisiana through the District Attorney, Parish of East Baton Rouge, State of Louisiana, be ordered by this Honorable Court to furnish the said Bill of Particulars above requested; and that service of same be made upon this defendant and that the Honorable District Attorney for the Parish of East Baton Rouge, State of Louisiana, be duly served with a copy hereof.

And your defendant prays for all such other relief to which he is or may be entitled.

Attorneys for Defendant:

Johnnie A. Jones;
Murphy W. Bell, 971 South 13th Street, Baton Rouge, Louisiana,

By: Johnnie A. Jones.

Of Counsel: Jack Greenberg, 10 Columbus Circle, New York 19, New York.

[File endorsement omitted]

[fol. 11]
State of Louisiana
Parish of East Baton Rouge

AFFIDAVIT

Before Me, personally appeared the defendant, Dion Tyrone Diamond, who, after being first duly sworn, deposes and says:

That the foregoing pleadings, "Application for Bill of Particulars," are true and correct.

Dion Tyrone Diamond

Sworn to and Subscribed before me this 23rd day of March, 1962.

Johnnie A. Jones, Notary Public.

ORDER

Let Honorable Sargent Pitcher, Jr., District Attorney for the Parish of East Baton Rouge, State of Louisiana, be, and he is hereby ordered to furnish the defendant, Dion Tyrone Diamond, the Particulars requested in the foregoing application, within ..... days from the date hereof.

Baton Rouge, Louisiana, March ....., 1962.

....., Judge.

[fol. 12]

DIVISION "A"

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Case Number 42,917

[Title omitted]

MOTION FOR NEW TRIAL—Filed May 23, 1962

And now comes the said Dion Tyrone Diamond (hereinafter referred to as "Defendant"), through his undersigned counselor, and moves the Court that the verdict of this Honorable Court rendered on Tuesday, May 8, 1962, be set aside and a new trial ordered, for the following reasons, to-wit:

—1—

That the said verdict is contrary to the law and evidence in that the defendant did not engage in any overt acts of violence or intimidation or acts of foreseeability of disturbing the peace or the public, nor did the defendant engage in any activity that had been denounced as a crime by LSA-R.S. 14:103(7) of 1950, as amended, the Statute under which the defendant is charged.

—2—

That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendant, on January 30 and 31, 1962, merely made speeches in protest of racial segregation to a small group of college students assembled in front of the Student Union Building on the campus of Southern University whereby he encouraged the students to stay out of classes in support of the freedom movement protesting racial segregation in the Baton Rouge community, the activity being not proscribed by a general disturbing of the peace statute, except depriving the defendant of his constitutional protections guaranteed by the First and Fourteenth Amendments to the Constitution of the United States of America.

[fol. 13] —3—

That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendant did not engage in any acts of violence or intimidation and since the defendant is not herein charged with conspiracy he cannot be held accountable for any acts of violence or intimidation perpetrated by other participants in the freedom movement in protest of racial segregation in the Baton Rouge community, except depriving defendant of due process of law and equal protection of the laws accorded to all persons and citizens by the Fourteenth Amendment to the Constitution of the United States of America. However, defendant denies that there were any acts of violence perpetrated by any participants in the freedom movement demonstration in which he participated.

—4—

That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendant, as did others, between December 15, 1961 and February 1, 1962, made many speeches or public addresses on the campus of Southern University and to its student body urging or encouraging

the students of said University to stay out of classes in protest of racial segregation and in support of the freedom movement in which students of the various Negro colleges and universities throughout the nation and particularly in the Southern States were participating; and that, to sustain a verdict of guilty in such case made and provided violates the defendant's freedom of speech accorded by the First Amendment to the Constitution of the United States of America and, furthermore, denies him due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, the evidence being such that it is impracticable to determine specifically who was responsible for the actions of the students of Southern University who participated in the freedom movement demonstrations. The defendant being not charged with conspiracy cannot be held accountable for malicious acts of others, if there were any such acts.

[fol. 14] —5—

That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendant at the time of his arrest was alighting from a taxi cab and was not engaged in any manner whatsoever in any racial controversy and was not ostensibly protesting racial segregation; that the defendant was arrested on February 1, 1962 by a campus security officer who was whimsically constrained to arrest the defendant for freedom speeches defendant made on the campus of Southern University on each of the next two preceding days. Notwithstanding, the evidence clearly establishes that Southern University is a public institution and that the defendant, as well as others, had free accessibility to the campus, i.e., to frequent the campus and therewith visit friends, relatives and associates; that, therefore, defendant alleges and avers that to deny him the right to frequent the campus of Southern University is a denial of the right of freedom of association accorded by the First Amendment to the Constitution of the United States of America, and to subject him to the criminal processes in such case made and provided is a denial of due process and

equal protection of the laws guaranteed to him, a citizen of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

—6—

That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendant did not conduct himself in any way which disturbed or tended to disturb the peace. However, the defendant, on January 30 and 31, 1962, did make speeches in front of the Student Union Building on the campus of Southern University encouraging the students of Southern University, a segregated institution for Negro college students, to protest (as a unified student body) racial segregation in the Baton Rouge community; that such activities in which the defendant engaged does not constitute a violation of a disturbing the peace Statute, except depriving defendant of freedom of speech, due process of law and equal protection of the laws guaranteed the defendant, a citizen of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

[fol. 15] —7—

That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that Southern University is a public institution of higher learning; that since the defendant is a member of the Negro race and Southern University is a segregated institution of higher learning for members of the Negro race and it being established that there was no objection to defendant being on the campus of said institution, except for his ostensible participation in activities in protest of racial segregation; that to criminally prosecute defendant in such case made and provided is a flagrant violation of the due process of law and equal protection of the laws clauses of the Fourteenth Amendment to the Constitution of the United States of America.

—8—

That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States of America; that said verdict deprives the defendant of his freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws as guaranteed by the provisions of the Constitution of the State of Louisiana and of the United States of America, respectively.

—9—

The evidence clearly establishes that Southern University, a public institution of higher learning, was freely accessible to and freely used by the public in general, that defendant, being a member of the invited public, was entitled to free and unmolested accessibility of the campus thereof.

[fol. 16] Wherefore, your mover prays that, after due proceedings had, the verdict of the Honorable Court be set aside and annulled and a new trial ordered herein.

Attorneys for Defendant:

Johnnie A. Jones;
Murphy W. Bell, 971 South 13th Street, Baton Rouge, Louisiana.

By: Johnnie A. Jones.

Of Counsel: Jack Greenberg, 10 Columbus Circle, New York 19, New York.

Duly sworn to by Johnnie A. Jones, jurat omitted in printing.

[File endorsement omitted]

[fol. 17]

DIVISION "A"

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Case Number 42,917

[Title omitted]

BILL OF EXCEPTIONS—Filed November 8, 1962

To the Honorable, the Judges of the Nineteenth Judicial District Court, in and for the Parish of East Baton Rouge, State of Louisiana:

—1—

Be It Remembered, that on Friday, March 23, 1962, an Application for Bill of Particulars and a Motion to Quash were filed herein on behalf of the defendant, Dion Tyrone Diamond, and same, on Monday, April 9, 1962, were argued and submitted; and that, this Honorable Court, for oral reasons assigned, rendered Judgment herein overruling the said Application for Bill of Particulars and Motion to Quash, to which ruling of the Court counsel for the defendant did then and there except and reserve a formal Bill of Exception, and asked that the said Motion and the Bills of Information in cases numbers 42,612; 42,615; 42,616 and 42,917, pending on the criminal docket of this Court against the defendant herein, be made a part of the record hereof.

—2—

Be It Further Remembered, that on Tuesday, May 8, 1962, this case came on for trial in accordance with previous assignment and William Pass, called as a witness on behalf of the State, testified on "Direct Examination" in response to questions propounded to him by the Assistant District Attorney, Wall, as follows:

[fol. 18] "Q. State your name please?

A. My name is William L. Pass.

Q. What is your job William?

A. My job is security officer, chief security officer at the university.

Q. Where?

A. Southern University.

Q. Would you speak up a little bit, William, so we can all hear?

A. My job is chief security officer at Southern University.

Q. And how long have you held that job?

A. Since the 1st of September 1961."

To which testimony counsel for defendant objected on the ground that no explanation had been given as to the status of a security officer, it being not explained whether or not a security officer was a bona fide peace officer or sheriff, which objection was overruled by the Court on the ground that such enlightenment of counsel for the defendant could be secured from the witness on Cross-Examination, to which ruling counsel for defendant did then and there except and reserve a formal Bill of Exception.

—3—

Be It Further Remembered, that on Tuesday, May 8, 1962, this case came on for trial in accordance with previous assignment and William Pass, called as a witness on behalf of the State, testified on "Direct Examination" in response to questions propounded to him by the Assistant District Attorney, Wall, follows:

"Q. Will you look at these signs, William, and see if you can—just pull them all out if you will. See if you can tell us what those are, where you got them, and so forth.

A. These are the signs that were issued out to various students."

To which testimony counsel for defendant objected to the adducing of any testimony relative to the signs or placards, because there was no means of identifying the defendant

with the manufacturing of said signs, which objection was [fol. 19] overruled by the Court for reason of prematurity, to which ruling counsel for defendant did then and there except and reserve a formal Bill of Exception.

—4—

Be It Further Remembered, that on Tuesday, May 8, 1962, this case came on for trial in accordance with previous assignment and William Pass, called as a witness on behalf of the State, testified on "Direct Examination" in response to questions propounded to him by the Assistant District Attorney, Wall, as follows:

"Q. And you are satisfied those are some of the signs that were being used by the students?
A. Very much so."

After which, the State offered the various items or signs to be admitted into evidence and counsel for defendant objected to the admissibility of said signs on the grounds: (a) immateriality, (b) that the proper foundation had not been laid for the introduction of said placards, (c) improper evidence under the Bill charging the crime, the defendant being not charged with conspiracy is not accountable, nor responsible for the acts of others, which objection was overruled for the reasons that the case was not of such nature that required identification of evidence with a degree of particularity, the presumption being that a man knows the natural consequences of his acts, to which ruling counsel for defendant did then and there except and reserve a formal Bill of Exception.

—5—

Be It Further Remembered, that on Tuesday, May 8, 1962, this case came on for trial in accordance with previous assignment and Martin L. Harvey, called as a witness on behalf of the State, testified on "Direct Examination" in response to questions propounded to him by the Assistant District Attorney, Wall, as follows:

"Q. Had you given Diamond any authority to conduct this procession and demonstration throughout the classroom?

A. No, I had not."

[fol. 20] To which testimony counsel for defendant objected on the ground that same was inadmissible for want of the proper foundation, there being no testimony to the effect that the defendant had conducted a procession or demonstration, which objection was overruled for the reason that the determination of a proper foundation for the introduction of evidence was within the discretion of the Court, to which ruling counsel for defendant did then and there except and reserve a formal Bill of Exception.

—6—

Be It Further Remembered, that on Tuesday, May 8, 1962, this case came on for trial in accordance with previous assignment and Martin L. Harvey, called as a witness on behalf of the State, did testify, on "Cross Examination," as follows:

"Q. Now, Dean, have any such meetings prior to January 30th, 1962 been held by any of the Southern University students on the campus of such nature?

A. Without permission?

Q. Yes.

A. Yes.

Q. Did you have occasion to hear any of those speeches, sir?

A. What were they about?"

To which testimony State objected and the Court sustained the objection on the grounds that it was immaterial whether the freedom of speech exercised by the defendant was effective and the students responded to speeches made by the defendant or others, to which ruling of the Court counsel for the defendant did then and there except and reserve a formal Bill of Exception.

—7—

Be It Further Remembered, that on Tuesday, May 8, 1962, immediately after the State had presented its side of the case and rested same, counsel for defendant moved for a directed verdict on the ground that the State had failed to make out a prima facie case and that the evidence adduced on behalf of the State was insufficient to warrant and/or sustain a conviction of the defendant, which motion [fol. 21] for a directed verdict was overruled by the Court, and counsel for the defendant did then and there except to the ruling of the said Court and reserve a formal Bill of Exception.

—8—

Be It Further Remembered, that on Tuesday, May 8, 1962, this case came on for trial in accordance with previous assignment, the defendant, Dion Tyrone Diamond, being present in Court represented by counsel, evidence was introduced, the case was argued and submitted. Whereupon, for oral reasons assigned, the Court found the defendant guilty of disturbing the peace, as charged, to which verdict of the Court counsel for the defendant did then and there except and reserve a formal Bill of Exception and served notice in Open Court to the Court and opposing counsel of his intention to apply to the Honorable Supreme Court of the State of Louisiana for Writs of Certiorari, Mandamus and Prohibition.

—9—

Be It Further Remembered, that the defendant, Dion Tyrone Diamond, having previously been tried and found guilty of disturbing the peace, a Motion for New Trial was filed on his behalf on Wednesday, May 23, 1962, which Motion on Thursday, May 24, 1962, was argued and submitted and, for oral reasons assigned, was overruled by the Court, to which ruling of the Court counsel for the defendant did then and there except and reserve a formal Bill of Exception.

—10—

Be It Further Remembered, that on Thursday, May 24, 1962, the defendant, Dion Tyrone Diamond, was brought before the bar for sentence. Whereupon the Court sentenced the defendant to pay a fine of One Hundred and No/100 ($100.00) Dollars and costs, or in default of payment thereof to be confined in the Parish Jail for thirty (30) days, and in addition thereto to be confined in the Parish Jail for sixty (60) days, to which sentence counsel for the defendant excepted and reserved a formal Bill of Exception, and served notice to the Court and opposing counsel of his intention to apply to the Honorable Supreme Court of Louisiana for Writs of Certiorari, Mandamus and Prohibition, and requested that the defendant be released on his present bond.

[fol. 22] The defendant, Dion Tyrone Diamond, through his attorneys of record, having submitted this his Bills of Exceptions to the District Attorney now tenders the same to the Court and prays that the same be signed and sealed by the Judge of the Honorable Court pursuant to the Statute in such case made and provided, which is done accordingly this 8th day of Nov., 1962, at Baton Rouge, Louisiana.

Fred S. LeBlanc, Judge, 19th Judicial District Court of Louisiana.

Respectfully submitted this Monday, June 4, 1962.

Attorneys for Defendant:

Johnnie A. Jones and Murphy W. Bell.

By: Johnnie A. Jones.

Of Counsel:

Jack Greenberg, 10 Columbus Circle, New York 19, New York.

Wiley A. Branton, 119 E. Barraque Street, Pine Bluff, Arkansas.

[File endorsement omitted]

[fol. 23]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Docket

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

PER CURIAM TO BILL OF EXCEPTION NO. 1—
November 8, 1962

The application for a bill of particulars was denied by the court for the reason that the information sought by the defendant did not pertain to the nature of the charge. LSA-R.S. 235. It will be noted that the defendant in his application did not call upon the district attorney to specify under which sub-section of LSA-R.S. 14:103 he was proceeding. The bill of information charges a violation of R.S. 14:103 and sets forth all the facts upon which the state was relying for a conviction. The state is not required to furnish to the defendant the evidence it intends to introduce to obtain a conviction. Likewise, the law does not require the state to supply the names of any witnesses to the defendant.

When the court rendered judgment denying defendant's application for a bill of particulars defendant objected to the ruling of the court and reserved a "formal" bill of exception, "and asked that the motion, the bill of information all be made a part of the record * * *." Defendant did not request that the ruling of the court be made a part of the Bill of Exception. Moreover, he did not specify the ground of his objection and did not make that ground a part of his Bill of Exception. Defendant's Bill of Exception does not have incorporated within it any of these matters and there is nothing attached to it. LSA-R.S. 15:498-499.

In objecting to the ruling of the court counsel for the defendant in reserving his Bill of Exception asked that the motion for a bill of particulars and the bill of information be made a part of the "record"—not a part of the Bill of Exception. The bill of information and the applica-
[fol. 24] tion for a bill of particulars were already part of the record. No part of the record becomes a part of the Bill of Exception unless it is incorporated therein or attached thereto and made a part thereof.

The motion to quash the bill of information was overruled by the court. In Paragraph 1 of the motion to quash defendant contends that the bill of information amounts to a multiplicity of charges growing out of the same incident or occurrence, yet he does not claim that the bill of information is faulty on the ground of duplicity. In fact, he alleges "that said alleged acts could only constitute a single crime * * *." The state contended that under the authority of LSA-R.S. 15:222 it had the right to cumulate the acts of the defendant in one count, since it was apparent that they were connected with the same transaction and constituted but one act and that it had charged them conjunctively in the bill of information. Defendant, as pointed out above, conceded that the acts of the defendant constituted but one crime. This court was of the opinion the state's position was correct. State v. Morgan, 116 So. (2d) 682, 238 La. 829; State v. Amiss, 89 So. (2d) 877, 230 La. 1003. Accordingly, the court overruled the motion to quash the bill of information on this ground of attack.

In Paragraph 2 of the motion to quash defendant urges that the statute (LSA-R.S. 14:103, as amended) should be declared void for vagueness, in that no one could reasonably be expected to know what conduct is prohibited. The statute sets forth six different specific acts, disjunctively, any one of which, if done in such a manner as foreseeably would disturb or alarm the public, constitutes the crime. Sub-section 7 covers the commission of any other act in such a manner as to unreasonably disturb or alarm the public. The Supreme Court of Louisiana in the case of
[fol. 25] Town of Ponchatoula v. Bates, et al., 173 La.

824, 138 So. 851, upheld the constitutionality of a town ordinance denouncing the crime of disturbing the peace which read in part: "It shall be unlawful for any person within the corporate limits of the Town of Ponchatoula to engage in a fight or in any manner disturb the peace." The court held that it was not necessary that the ordinance define the offense for the reason that no better definition for the offense could be found than that contained in the ordinance itself. The Supreme Court of Louisiana cited this case in denying writs in the case of Louisiana v. Jannette Hoston, et al., No. 35,567 on the Criminal Docket of the Nineteenth Judicial District Court and the two cases consolidated with it. See also these cases reported in 82 Supreme Court Reporter 248 wherein the court did not pass upon the constitutionality of the statute involved.

Paragraph 3 of the motion to quash alleges that the *statute is so vague in its application* as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States of America. On the hearing on the motion no evidence was introduced by the defendant to show that the statute was being applied in such an alleged unconstitutional manner.

Article 4 of the motion to quash alleges as a fact that there was no disturbance of the peace by the defendant within the definition of the crime. This court took the position that the bill of information charged a crime under the statute and that it would not be known whether the defendant committed the crime charged until after the state had put on its case.

Article 5 of the motion to quash alleges that the statute was being unconstitutionally applied because the defendant, a member of the Negro race, has been heretofore engaged in activities protesting racial segregation and had lately come to Southern University to resume his collegiate work [fol. 26] there as a student; that when he attempted to speak out in the cause of justice and freedom he was arrested and jailed. On the trial of the motion to quash

the defendant offered no proof to establish these alleged facts.

Article 6 of the motion to quash sets forth a conclusion to the effect that the use of the criminal processes of the State of Louisiana in the manner described in paragraph 5 of the motion denies and deprives the defendant of his rights, privileges, immunities and liberties guaranteed to him by the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States of America. In this connection, the defendant on the hearing of the motion offered no proof to show that defendant's constitutional rights had been violated in the manner described.

Article 7 of the motion to quash alleges that the bill of information is insufficient to charge a crime under LSA-R.S. 14:103 of 1950, as amended, "except that the Statute be unconstitutional under the constitution of the State of Louisiana" and, as applied, is violative of freedom of speech and assembly guaranteed to defendant by the First and Fourteenth Amendments to the Constitution of the United States of America. This court felt that the bill of information as drawn did sufficiently charge the commission of a crime under the statute and that the statute was constitutional. As to the manner in which it was being applied no proof was introduced by the defendant at the hearing on the motion to show that it was being applied in any unconstitutional manner.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

Fred S. LeBlanc, Judge, 19th Judicial District Court.

[File endorsement omitted]

[fol. 27]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Docket

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

PER CURIAM TO BILL OF EXCEPTION NO. 2—
November 8, 1962

This Bill of Exception was reserved to the ruling of the court overruling defendant's objection to the testimony incorporated in the Bill of Exception. The basis of the objection was that the testimony of this witness should not be considered by the court because no explanation had been made as to what a security officer is, as to whether or not he is a peace officer or sheriff. The court considered the objection to be premature, and informed counsel for the defendant that he could develop this point on cross-examination. As a matter of fact, the witness on direct examination later explained that he was not a peace officer and that his duties as security officer consisted of maintaining the safety of the faculty staff, the administrative body and students of Southern University, as well as the property of the university.

I wish to point out that counsel for the defendant in reserving his Bill of Exception used these words: "To which ruling, Your Honor, I except and ask that a formal bill be reserved." Counsel did not at that time request that the facts upon which the objection and ruling were based be made a part of the Bill of Exception, nor did he move that the objection, the ruling and the reasons for the ruling be made a part of the Bill of Exception.

It is the judgment of this court that the Bill of Exception was improperly reserved. LSA-R.S. 15:499-500.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

Fred S. LeBlanc, Judge, 19th Judicial District Court.

[File endorsement omitted]

[fol. 28]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Docket

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

PER CURIAM TO BILL OF EXCEPTION NO. 3—
November 8, 1962

After the state's witness, William Pass, answered the question set forth in this Bill of Exception, counsel for the defendant objected to any testimony about the signs "because there is nothing on those things to identify that the accused had the placards made or that he had anything to do with them, those could be anybody's signs." The court overruled the objection as being premature, taking the position that this witness could testify about his familiarity with the signs. The signs at this juncture were not being offered in evidence by the state. It was the position of the court that it would give the state the opportunity to show, if it could, that there was some connection between the signs and the defendant in this case. Later, the state was able to show by the testimony of this witness that he obtained some signs on the date of the alleged offense from Barracks B on the campus of Southern

University and that a group of students from the university were carrying those signs, or similar signs, when they were marching on the campus and into our buildings thereon where classes were in progress after being encouraged by the defendant to go into the classrooms and disrupt the classes.

In reserving this Bill of Exception counsel for the defendant did not comply with the requirements of the law. LSA-R.S. 15:498–15:499. He merely excepted to the ruling in the following words: "To which ruling I except and ask that a formal bill be reserved." Although the minute clerk [fol. 29] at the time of the reservation of the Bill of Exception took down the facts upon which the objection and the ruling were based, together with the objection, the ruling and the reasons for the ruling conformable to LSA-R.S. 15:499, counsel for the defendant, as stated above, did not request that this be done.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

Fred S. LeBlanc, Judge, 19th Judicial District Court.

[File endorsement omitted]

[fol. 30]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Docket

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

PER CURIAM TO BILL OF EXCEPTION NO. 4—
November 8, 1962

After the testimony recited in this Bill of Exception the state offered in evidence some of the signs which had been identified by the witness as being the signs, or similar

signs, which the students carried with them as they marched on the campus of the university and into the classrooms while classes were in progress, after they were encouraged by the defendant to disrupt the classes. Counsel for the defendant objected to the offering on the ground that the evidence was immaterial; secondly, that the witness had not testified that the defendant made the signs, or that the defendant had any knowledge of the signs being made, or that the defendant had instructed anybody to make the signs. The offering was also objected to on the ground that the defendant was not being tried for conspiracy and that the defendant was not responsible for what the students did, contending that all that the defendant did was to use freedom of speech. Objection was also made on the ground that the state had not laid a proper foundation for the introduction of the proffered evidence, in that the state had not accounted for the whereabouts of the signs from the date of the commission of the crime to the date of the trial and that it was possible that the signs could have been altered or changed.

The Court permitted the signs (State—1, inscribed: This is a Freedom Line! Don't Cross It"; State—2, inscribed: "Let's Twist Back to the Dorms. No Classes!!"; State—3, inscribed: "Please Stay Out!! Support Your Fellow Students"; and State—4, inscribed: "No Class [fol. 31] Today, Sorry") to be introduced in evidence. The reason for the ruling as stated verbatim by the court at the time was: "This is not a case of theft where property has to be identified with that degree of particularity. This witness has testified where he found the signs, the students were in the process of making them there, and he saw either those signs or similar signs being carried by the students after they had been exhorted to go into the classrooms and get the students out of the classrooms, pull them out if necessary. This accused is charged with engaging in and encouraging the students to hold unruly, unauthorized demonstrations. Now, in heeding his words of encouragement it is always admissible to show what happened, that the students, being thus encouraged by the accused, proceeded to stomp and march and sing and

carry these signs, even to the extent, to use the words of the accused himself, get them out of the classrooms, pull them out if necessary. Now, under the law there is a presumption that a man is presumed to know the natural consequences of his act, and I think that this accused, after so exhorting these students to swing into the classrooms, to march and to get the students out of there because the faculty is already behind them, and in effect if they refused to leave the classrooms to pull them out, and anything that these students did thereafter after being encouraged by this accused to do would be admissible, the natural consequence." * * * "He has said that he either saw those signs or similar signs being carried by the students, so I say it is not necessary in this type of case, because if we were trying these students for carrying signs which violated the law then that would be a different proposition, but the students are not being tried, the accused is being tried for disturbing the peace by urging them to do an unlawful thing, break up the classes, [fol. 32] and, as I said, under 432 every defendant is presumed to intend the natural probable consequences of his act, and the law presumes that after he exhorts them to do what he did do or did tell them that they would resort to this type of activity, carry out his words of encouragement to break up the classes because the faculty was behind them and he was seeing to it, or going to see to it if he could, if the students would cooperate, to just break up the classes at Southern University so there wouldn't be any classes. Now in going about that he presumed the natural consequences of his act, they might sing, they might march, they might stomp and they might carry signs, and as long as this witness can say that these are similar signs that is enough for the court in this type of procedure, so I overrule the objection."

In reserving his Bill of Exception counsel for the defendant did so in the following words: "To which ruling we except and ask that a formal bill be reserved." This, in the opinion of the court, did not meet the requirements of the law. The minute clerk did, however, at the time take down the facts upon which the Bill of Exception and the

ruling were based, together with the objection, the ruling and the reasons for the ruling in compliance with LSA-R.S. 15:499.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

Fred S LeBlanc, Judge, 19th Judicial District Court.

[File endorsement omitted]

[fol. 33]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Docket

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

PER CURIAM TO BILL OF EXCEPTION NO. 5—
November 8, 1962

This Bill of Exception was taken by the defendant when the court overruled defendant's objection to the testimony set forth in this Bill of Exception. The basis of the objection was that there had been no testimony that the defendant conducted the procession of students on the campus and into the classrooms. The court overruled the objection for the reason that it was up to the court (the court being the judge of the facts in the case) to determine whether or not the defendant conducted the procession.

The witness on the stand at the time was Marvin L. Harvey, Dean of Students of Southern University. As such, he testified it was his responsibility to grant or refuse permission for the holding of student meetings on the campus. He testified that he had not authorized the defendant to

hold any student meetings on the campus during the dates in the bill of information. Such unauthorized meetings were held, he testified, at which the defendant addressed the students. After the meeting held on the morning of January 30, 1962 this witness observed that approximately forty students were walking around the campus carrying signs. This occurred about one o'clock that afternoon. On the following morning the defendant was addressing an unauthorized meeting of students, estimated by the witness to be between four and five hundred in number. There was another such meeting of students held between 12:30 and 1 o'clock on that same day, at which the defendant spoke to the students, and at about the hour of 2 o'clock the same afternoon the students paraded through the class-[fol. 34] rooms in a noisy manner carrying signs. In one of the buildings this witness testified that some students left classes. The demonstrators numbered about one hundred and the demonstration lasted more than thirty minutes.

When this objection was urged there was already testimony in the record from Security Officer William L. Pass that he saw and heard the defendant speaking to a group of from two to three hundred students on the campus, at which meeting he heard the defendant tell the students not to attend classes, that they should show their gratitude by not going to classes since the faculty was behind them. At another meeting of about the same number of students he heard the defendant tell the group to go to the classrooms and pull the students therefrom.

Now, one of the meanings of the word "conduct" is to "direct in action or course." It was clear to the court that the defendant had conducted the procession and demonstration of the students on the campus and in the classrooms. Under LSA-R.S. 14:24 all persons concerned in the commission of a crime, whether present or absent, whether they directly commit the offense, aid and abet in its commission, directly or indirectly counsel or procure another to commit a crime, are principals.

For the reasons given in the other per curiams, the court is of the opinion that this Bill of Exception was improperly reserved.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

Fred S. LeBlanc, Judge, 19th Judicial District Court.

[File endorsement omitted]

[fol. 35]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Docket

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

PER CURIAM TO BILL OF EXCEPTION NO. 6—
November 8, 1962

This Bill of Exception was taken by the defendant after the testimony incorporated therein was given by the witness, Marvin L. Harvey, Dean of Students at the university. Counsel for the defendant, after ascertaining from the witness that unauthorized meetings on the campus had been held by students of Southern University on dates prior to the dates in the bill of information at which speeches were made, wanted to know from this witness what those speeches were about. The state objected. The court sustained the objection for the reason that it made no difference in the case on trial as to whether the law had been violated by others prior to the date of the crime charged in the bill of information. The court felt that whether the university had taken action as to those offenders was immaterial in the case at bar. The court was also of the opinion that it made no difference in the instant case whether the unlawful processions and dem-

onstrations of the students on the dates alleged in the bill of information were brought about *solely* by the encouragement and exhortation of the defendant made by him on those dates or whether these processions and demonstrations were due in part to speeches that the students had heard from other speakers on other occasions prior to the date of this offense. The court took the position that the statute was violated when the state proved that the defendant had committed the acts alleged in the bill of information in such a manner as would foreseeably disturb or alarm the public. Whether the students who participated in the noisy processions and demonstrations had [fol. 36] been impressed by the defendant's speeches encouraging and exhorting them to so act was, in the opinion of the court, immaterial for the reason that such speeches were of such a nature as to foreseeably disturb and alarm the public, regardless of the resulting action. The court had permitted the state to prove the resulting action for the reason that this defendant was presumed by law to intend the natural and probable consequences of his act. LSA-R.S. 15:432.

This court is of the opinion that this Bill of Exception was improperly reserved for the reasons given in the preceding per curiams.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

Fred S. LeBlanc, Judge, 19th Judicial District Court.

[File endorsement omitted]

[fol. 37]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Docket

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

PER CURIAM TO BILL OF EXCEPTION NO. 7—
November 8, 1962

This Bill of Exception was reserved to the action of the court overruling defendant's motion for a directed verdict of acquittal after the state had rested its case in chief. In his motion counsel for defendant contended that the state had failed to prove its case, claiming that the evidence adduced by the state was insufficient to warrant and/or sustain a conviction of the defendant.

The court overruled the motion for the reason that the state, in the opinion of the court, had sustained its burden of proving the guilt of the defendant beyond a reasonable doubt. Reliable, competent evidence offered by the state showed that the defendant, a non-student, was present on the campus of Southern University on the dates alleged in the bill of information, and while there did, in speeches made by him in meetings not authorized by those in charge of such matters, encourage and exhort Southern University students to boycott classes and to march into the classrooms while classes were in session and to disrupt the classes, even to the extent of pulling the students from the classrooms, in such a manner as would foreseeably disturb and alarm the public.

All of the testimony introduced by the state was transcribed by the clerk, but counsel for the defendant in reserving his bill of exception to the court's ruling did not

request that the testimony be attached to or made a part of the bill. When the court overruled the motion for a directed verdict, counsel for the defendant reserved his Bill of Exception in the following words: "To which ruling I except and ask that a formal bill be reserved."
[fol. 38] This Bill of Exception does not have incorporated within it the testimony offered by the state in chief, nor does it have that testimony attached to it or made a part thereof.

At the conclusion of the trial, after all the evidence was in, counsel for the defendant again moved for a directed verdict of acquittal. The court, being convinced of the guilt of the defendant beyond a reasonable doubt, overruled the motion.

All of the testimony introduced in the case by the state and the defendant was taken down and transcribed by the clerk. In reserving a Bill of Exception to the court's ruling in overruling the last motion for a directed verdict of acquittal, counsel for the defendant did not request that all the testimony be made a part of the Bill of Exception. He merely excepted to the ruling and asked that "a formal bill be reserved." The Bill of Exception does not have the testimony incorporated in it, nor does it have the testimony attached to it or made a part thereof.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

Fred S. LeBlanc, Judge, 19th Judicial District Court.

[File endorsement omitted]

[fol. 39]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Docket

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

PER CURIAM TO BILL OF EXCEPTION NO. 8—
November 8, 1962

This Bill of Exception was reserved by the defendant to the court's verdict finding the defendant guilty as charged. The court found the defendant guilty as charged because it was convinced beyond a reasonable doubt of his guilt. The court heard all the evidence. That evidence was taken down and transcribed, but it was not made a part of this Bill of Exception. Counsel for the defendant merely excepted to the verdict "and asked that a formal bill be reserved."

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

Fred S. LeBlanc, Judge, 19th Judicial District Court.

[File endorsement omitted]

[fol. 40]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Docket

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

PER CURIAM TO BILL OF EXCEPTION No. 9—
November 8, 1962

This Bill of Exception was reserved to the court's action in overruling defendant's motion for a new trial. The motion for a new trial alleges that the verdict is contrary to the law and the evidence. The court heard all the evidence on the trial of the case and was convinced of the guilt of the accused beyond a reasonable doubt. All of this evidence, although taken down and transcribed, was not incorporated in the motion for a new trial, nor was it attached to it or made a part of it. Counsel in reserving this Bill of Exception did not request that all the testimony be made a part of his bill of exception.

This court was also satisfied that the statute denouncing the crime is constitutional.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

Fred S. LeBlanc, Judge, 19th Judicial District Court.

[File endorsement omitted]

[fol. 41]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Docket

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

PER CURIAM TO BILL OF EXCEPTION NO. 10—
November 8, 1962

This Bill of Exception was reserved by the defendant to the sentence imposed by the court upon the defendant. A comparison of the sentence with the penalty provisions of the statute (LSA-R.S. 14:103) clearly shows it to be legal in every respect.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November, 1962.

Fred S. LeBlanc, Judge, 19th Judicial District Court.

[File endorsement omitted]

[fol. 42]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Section

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

MINUTE ENTRY OF ARRAIGNMENT—March 8, 1962

The accused, charged with violation of L.R.S. 14:103, was present in court, formally arraigned on said charge and pleaded not guilty. Assigned for March 12, 1962.

No. 42,612, 42,613, 42,614, 42,615, 42,616 and 42,917
Criminal Section

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

MINUTE ENTRY OF CONSOLIDATION, ETC.—March 12, 1962

These cases were called for trial in accordance with previous assignment, the accused being present in court represented by counsel. Counsel for the State made an oral motion to consolidate these cases for the purpose of trial. Counsel for the accused objected to the consolidation of these cases, which objection was overruled by the court and the cases were consolidated for the purpose of trial, to which ruling of the court counsel for the accused objected and reserved a formal bill of exception.

Counsel for the accused objected to going to trial in Number 42,917 at this time for the reason that the accused has not been permitted a reasonable time to file preliminary motions in this case. The District Attorney agreed to a [fol. 43] continuance in all cases, which continuance was granted by the court. The court granted counsel for the accused until Friday, March 23, 1962 in which to file any motions he may see fit to file in Number 42,917.

The accused was ordered remanded in the custody of the sheriff.

No. 42,917—Criminal Section

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

MINUTE ENTRY OF APPLICATION FOR BILL OF PARTICULARS AND MOTION TO QUASH—March 23, 1962

Counsel for the accused filed an application for bill of particulars herein and served a copy on the District Attorney's office in open court.

Counsel for the accused filed a motion to quash herein and served a copy on the District Attorney's office in open court.

No. 42,612, 42,613, 42,614, 42,615, 42,616 and 42,917

Criminal Section

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

MINUTE ENTRY OF ASSIGNMENT—March 28, 1962

Assigned for May 8, 1962, Johnny Jones, Murphy Bell and Wiley A. Branton, Attorneys, to be notified.

[fol. 44]

No. 42,917—Criminal Section

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

MINUTE ENTRY OF ARGUMENT, SUBMISSION, ETC.—
April 9, 1962

This case came before the court on a motion to quash and an application for bill of particulars filed herein on behalf of the accused. The motion and application were argued by counsel, submitted, and the court, for oral reasons assigned, rendered judgment herein overruling the motion to quash and the application for bill of particulars, to which ruling of the court counsel for the accused objected and reserved a formal bill of exception, and asked that the motion, the bill of information all be made a part of the record, including the bills of information in cases 42,612, 42,615, 42,616 and 42,917.

No. 42,917—Criminal Section

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

MINUTE ENTRY OF ARGUMENT, SUBMISSION, ETC.—
May 8, 1962

This case came on for trial in accordance with previous assignment, the accused, charged with violation of L.R.S. 14:103, being present in court represented by counsel. On motion of counsel for the accused, the court ordered a sequestration of witnesses in this case. Evidence was introduced, the case argued and submitted, and the court,

for oral reasons assigned, found the accused guilty as charged, to which verdict counsel for the accused excepted and asked that a formal bill be reserved. Counsel for the accused gave notice in open court to the court and opposing counsel of his intention to apply to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition.

The court denied the request of counsel for the accused to release the accused on his old bond, and set a new bond for the accused pending sentence in the amount of $700.00. [fol. 45] Sentence deferred unil May 24, 1962.

No. 42,917—Criminal Section

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

MINUTE ENTRY OF MOTION FOR NEW TRIAL—
May 23, 1962

Motion for new trial filed on behalf of defendant.

No. 42,917—Criminal Section

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

MINUTE ENTRY OF ARGUMENT, SUBMISSION, ETC.—
May 24, 1962

The motion for new trial previously filed herein was argued, submitted, and the court, for oral reasons assigned, overruled the motion for new trial, to which ruling of the court counsel for the accused excepted and asked that a formal bill be reserved.

The accused, having previously been tried for violation of L.R.S. 14:103 and found guilty of said violation, was present in court represented by counsel. The accused was brought before the bar for sentence. Whereupon the court sentenced the accused to pay a fine of $100.00 and costs, or in default of payment thereof to be confined in the parish jail for thirty days, and in addition thereto to be confined in the parish jail for sixty days, to which sentence counsel for the accused excepted and asked that a formal bill be reserved.

Counsel for the accused gave notice to the court and to the Assistant District Attorney in open court of his intention to apply to the Supreme Court of Louisiana for writs [fol. 46] of certiorari, mandamus and prohibition, and requested that the accused be released on his present bond. The court ordered the accused released on his present bond, and granted counsel for the accused until June 22, 1962 during which to apply to the Supreme Court for writs.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 47]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Section

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

MINUTE ENTRY OF EXTENSION OF TIME—
June 15, 1962

On motion of counsel for the accused, the court extended the time limit to apply to the Supreme Court for writs from June 22, 1962 until June 29, 1962.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 48]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Section

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

MINUTE ENTRY OF EXTENSION OF TIME—
June 29, 1962

At this time Honorable Fred S. LeBlanc took the bench and the following matters were handled:

The court extended the time in which the defendant has to apply to the Supreme Court of the State of Louisiana for writs herein until October 19, 1962.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 49]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Section

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

MINUTE ENTRY OF EXTENSION OF TIME—
October 17, 1962

The Court extended the time during which the defendant may apply to the Supreme Court for writs in this case from October 19, 1962 to October 26, 1962.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 50]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Section

STATE OF LOUISIANA,

vs.

DION TYRONE DIAMOND.

MINUTE ENTRY OF EXTENSION OF TIME—
October 23, 1962

The court extended the time in which to apply to the Supreme Court for writs until November 16, 1962.

[fol. 51]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

No. 42,917—Criminal Section

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

MINUTE ENTRY OF EXTENSION OF TIME—
November 14, 1962

The court extended the time during which the defendant may apply to the Supreme Court for writs in this case from Friday, November 16, 1962 to Friday, November 23, 1962.

Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 51a] [File endorsement omitted]

[fol. 52]

IN NINETEENTH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

Criminal Section

Number 42,917

STATE OF LOUISIANA,

VS.

DION TYRONE DIAMOND.

Transcript of Proceedings—May 8, 1962

HONORABLE FRED S. LEBLANC, Judge Presiding.

APPEARANCES:

Alex W. Wall, Esq., Ralph L. Roy, Esq., For the State.

Johnnie A. Jones, Esq., Murphy W. Bell, Esq., Wiley A. Branton, Esq., For the Defendant.

Reported by: Betty Brady.

[fol. 54] J. J. HEDGMAN, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

(The direct examination of the above witness was not reported and, therefore, does not form a part of this transcript.)

Cross examination.

By Counsel for the Accused, Jones:

Q. What is your name again?
A. My name is J. J. Hedgman.
Q. Where are you employed?
A. Southern University.
Q. In what capacity, sir?

A. Director of admissions and registrar.

Q. And how long have you been employed?

A. Twenty-two years.

Q. Now, the last question that I asked you, do you know whether or not Dion Diamond had attempted to enroll through your office as a student of Southern University?

A. I do not know Dion Diamond.

Q. And whether or not he had contacted some of your subordinates you don't know?

A. I do not have any information on that.

Q. Mr. Hedgman, when a student enrolls do they all have [fol. 55] to contact you or contact some of your subordinates?

A. A student may enroll by requesting an application in writing or in person, it depends upon whom he contacts. If it is personal whoever serving the counter may serve him; if he writes a letter it comes directly to me.

Q. And if this contact was made personally to some of your subordinates you wouldn't have known it, would you?

A. No.

Counsel for the Accused, Jones: That's all.

Redirect examination.

By Assistant District Attorney, Wall:

Q. For the record now that one is being made, you have been the registrar at Southern University for how long?

A. Twenty-two years.

Q Now, in your capacity as registrar and in connection with this case against Diamond, Dion Tyrone Diamond, have you examined your records to determine if the accused was a student at Southern University on the days of January 30th and 31st of 1962?

A. I have.

Q. And was he a student at that time?

A. He was not.

Q. Have you further examined your records over a long [fol. 56] period of time to determine if he was ever a student at Southern University?

A. I have.

Q. And what do your records reflect?

A. That he has never been enrolled as a student at Southern University.

Q. And from your records can you determine if he ever made a proper application to be admitted as a student?

A. We could.

Q. And did he ever apply for admission as a student?

A. We have no record of his having applied as a student at Southern University.

Q. And regardless of whom he may have talked to in your office, if a proper application had been made and if admittance as a student had been made would that show up in your official records?

A. It would.

Q. And it did not show that?

A. It did not.

Assistant District Attorney, Wall: That's all.

[fol. 57] Recross examination.

By Counsel for the Accused, Jones:

Q. Would your record, Mr. Hedgman, reflect that the accused, Dion Diamond, came to your office to obtain an application form?

A. My record would not.

Q. It would not. If he had just come to your office and asked for an application form the record wouldn't show that, would it?

A. He would have been given a form if he had come and asked for it.

Q. Beg your pardon?

A. He would have been given an application form had he come and asked for one.

Q. But am I to understand from that that you would not have a record of that?

A. We do not keep records of application blanks that pass over the counter to students.

Q. Mr. Hedgman, in order to get an application form to come in to make application do you have to have special permission to do that?

A. State your question again. It seemed to be a double one, please.

Q. The question is, do you have to have, or whether or not a student or someone who intends to attend Southern as a student would have to have special permission to come [fol. 58] upon the campus and to come to the registrar's office to make application?

A. Southern is a public institution. Anyone may come there who wishes.

Q. Beg your pardon?

A. Southern is a public institution. Anyone who wishes may walk into any building there and ask for anything he wishes.

Q. And no special invitation is required, is that the understanding?

A. That's correct.

Counsel for the Accused, Jones: That's all.

STIPULATION AS TO TESTIMONY OF J. J. HEDGMAN, ETC.

Assistant District Attorney, Wall: That's all the questions we have in this particular case, Judge. Now, as I said, particularly in connection with this witness's testimony I would like to ask counsel to stipulate that if he were called again as a witness in any of these other cases that his testimony would be the same, simply to the point that according to his official records that this man, Diamond, has never applied for admission to Southern University and [fol. 59] has never been admitted as a student. Would you stipulate that his testimony would be the same if he were recalled?

Counsel for the Accused, Jones: Yes, I will stipulate to that.

Assistant District Attorney, Wall: Let it be shown that it is stipulated that if the State offers the testimony of J. J. Hedgman in any of the other cases which may come for trial, and the cases have already been identified by numbers heretofore, 42,612, 42,613, 42,614, 42,615 and 42,616. that his testimony would be the same as it has been in this suit, Number 42,917, with the further stipulation

that the testimony that he has given might be taken down and transcribed in any record of these other cases.

The Court: I would think you could go even further, provided it is agreeable, that it is further stipulated that the testimony of this witness, by stipulation, shall be used in all of the other cases against this accused that the State may bring to trial.

[fol. 60] Counsel for the Accused, Jones: You mean in all of the cases already pending with the court?

The Court: That's right.

Assistant District Attorney, Wall: That's what I said to start off with, that if we use his testimony in any other case it will be the same as it has been in this case.

The Court: Is that agreeable?

Counsel for the Accused, Jones: Yes, sir.

(Witness excused.)

William L. Pass, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

Direct examination.

By Assistant District Attorney, Wall:

Q. State your name, please?

A. My name is William L. Pass.

Q. What is your job, William?

A. My job is security officer, chief security officer at the university.

Q. Where?

A. Southern University.

[fol. 61] Q. Would you speak up a little bit, William, so we can all hear?

A. My job is chief security officer at Southern University.

Q. And how long have you held that job?

A. Since the 1st of September 1961.

Counsel for the Accused, Jones: Your Honor, I want to object to his testimony unless I get some explanation of what a security officer is, whether or not that is a peace officer or sheriff—

The Court: I imagine you can enlighten yourself, counsel, when you take the witness on cross-examination, so I overrule the objection.

Counsel for the Accused, Jones: To which ruling, Your Honor, I except and ask that a formal bill be reserved.

Q. By whom are you employed, William?

A. By Southern University, sir.

Q. And do you hold any official warrant from the State of Louisiana?

A. Not as of yet, sir.

Q. And you are not a special deputy of East Baton Rouge [fol. 62] Parish Sheriff's office, are you?

A. Not as of yet, sir.

Q. Have you made application for such warrant?

A. That is correct.

Q. And you are not, except as security officer with Southern University, you do not hold a special warrant from the State of Louisiana, is that correct?

A. That is correct, sir.

Q. In other words you are employed by Southern University?

A. That is correct.

Q. And what are your duties as security officer?

A. Well, my duties as security officer is to maintain safety for the faculty staff and administrative body and students of Southern University, and also to protect the property and also check anything that might be of a fire hazard, you know, to the plant itself.

Q. Then as your job implies, it has to do with the security of the university?

A. That is correct, sir.

Q. And that would have to do with personnel as well as the buildings, is that correct?

A. That is right, sir.

Q. Now, the State has charged in this bill of information that the accused, Dion Tyrone Diamond, during the period of January 30th and January 31st, 1962 violated L.R.S. 14:103 in that upon the premises of Southern University [fol. 63] he engaged in and encouraged students of Southern University to hold unruly unauthorized demonstrations

on the campus, and did lead and encourage said students to march through the university buildings while classes were being conducted, and did encourage these students to boycott and leave the classes in such manner as would foreseeably alarm and disturb the public. Now, during that period, January 30th and 31st of 1962, did you have occasion to see this accused, Dion Tyrone Diamond?

Counsel for the Accused, Bell: Your Honor, I am going to object to his question because this man has testified that he was a layman, and I think Your Honor knows that under the law of this state if he is a layman if he had seen this defendant violating the law and the law was a misdemeanor, he cannot come in at a later date and try to arrest him the way he did; he must make the arrest, if he is a peace officer, right then and there unless the man was in the act of more or less of committing a felony, and this testimony here is irrelevant and immaterial and has [fol. 64] nothing to do with the case unless he can show that this man, that what the violation was occurred in his presence, and he is a bona fide peace officer duly licensed by the State. It has nothing to do with this case.

The Court: Well, any person can testify to the commission of a crime. If he is an eye witness and knows anything of it of his own knowledge, and I think the question is did he have occasion to see this accused.

Counsel for the Accused, Bell: That's true, Your Honor, but the foundation has not been properly laid that this man was arrested properly, and we feel that the foundation should be laid as to why he was being held first before he brings in an eye witness to testify what happened two or three days before.

The Court: I haven't heard any testimony about any arrest at all up to now. He merely asked this witness did he have occasion to see the accused on this date, so I over- [fol. 65] rule the objection.

Q. Did you have occasion to see Diamond on January 30th and 31st of 1962?

A. I had the occasion to see him to know him on January 31st.

Q. Now that you say you had occasion to see him to know him, what do you mean by that, William?

A. Well, on days prior to this there were numerous amounts of gathering, demonstrations, whatever the case may be, but I never observed anyone more or less demanding a group of students, you see, to fit his identification, but on the 31st this particular individual in question was speaking with a group of students in front of the Union Building on the day of the 31st that was later identified as Dion Diamond.

Q. And the accused seated there at the counsel table, is that the accused that you saw and identified on January 31st as Diamond?

A. That is correct, sir.

Q. Now, having identified him on the 31st, do you recall whether or not you saw this particular individual, Dion Diamond, on January 30th on the university?

A. No, I cannot, I can't remember seeing him on the campus.

Q. Now, on January 31st where did you first see the accused?

A. In front of the Student Union Building.

Q. And is that on the campus, William?

[fol. 66] A. That is on the campus, it is in a little quadrangle in front of the university post office, recreation center, snack bar and the college of education.

Q. And was he alone or were there others around him?

A. There were others around him.

Q. Approximately how many?

A. Well, I'd say anywhere from two to three hundred students.

Q. And about what time of the day was that?

A. Well, the first time I observed him was in the morning, morning time, I would say on or about 9:15 or thirty, or something like that.

Q. And about how many students were there at that time?

A. Well there was the aforementioned figure, approximately two hundred, two fifty, or something like that.

Q. What was the relationship between Diamond and the students at that hour?

A. Well, at this particular time the students were in the midst of boycotting the classes on the campus, and from what I obtained from his conversation to the students—

Counsel for the Accused, Branton: Now, if Your Honor please, we are going to object to this as hearsay about what he obtained from somebody.

Assistant District Attorney, Wall: He said what he ob- [fol. 67] tained from the conversation that this man was making to the students.

The Court: Let's get that straight.

By the Court:

Q. Did you hear that remark?

A. That is correct.

Q. I mean did you hear it from the accused?

A. That is correct, sir.

The Court: I overrule the objection. Go ahead.

A. And Diamond—as I aforementioned the boycott was in the process on the campus, and, of course, he was trying in his own way to influence the students not to attend classes.

Counsel for the Accused, Bell: Your Honor, we object to the word "influence." I mean that is more or less his own opinion.

The Court: Well, that may be a conclusion. I think instead of making a general statement of that kind it would [fol. 68] be better to inform the court, if it is a fact, just in what manner—

A. Well, he told them not to go to classes.

By Assistant District Attorney, Wall:

Q. Now, on January 31st, 1962, was that a regular school day at Southern University?

A. That is correct.

Q. Were classes in progress when he was talking to the students?

A. That is correct.

Q. And were other students attending classes at that time?

A. It was a few attending classes.

Q. And do you recall what this man was telling the students in substance?

A. Well, like I said before I know that he said—he was telling the students not to go to classes. He also told them that the faculty was behind the students so at least they should be grateful enough to, you know, at least show their gratitude by not going because the faculty was behind them, at that time the faculty had signed some type of petition on the campus, and that is just some things that he said.

Q. Now, tell the Judge what developed from that meeting, William, throughout the day.

A. Well, now, it was mentioned that there would be a [fol. 69] meeting later. These are the words that I heard, and—but quite naturally they gave the meeting for one particular time and they held the meeting at another time. They said a meeting would be held at the same place at about 1 o'clock that day, so quite naturally being chief of security and my force being very small, well I disbursed myself to try to be prepared for whatever may come later on that day. So the students in this particular gathering broke up and after which they came back, but it was not 1 o'clock, it was during the noon hour, and this was the second gathering that they had.

Q. And did you see the accused at that time?

A. That is correct.

Q. And about how many students were assembled around him then?

A. Well I would say it was about the same amount, or it could have possibly been more. I know it was more than normal there and I didn't know exactly what they were going to do, see, but when I heard the word mentioned that we would move out throughout the classes then I left, you see, to try by some means to stop them from going throughout the classes.

Q. Now who was the leader of that second gathering?

A. Well Diamond was speaking to them at that particular meeting also.

Q. And what resulted from the second meeting of the students?

[fol. 70] A. Well, the students, when they broke up, well they started going through the classes. Some of the students had signs that they had printed down in the building we refer to as Barracks B, and they had various writings on the signs that they carried on their backs and everything, and the idea of the whole thing was to march throughout the campus—

Counsel for the Accused, Bell: Well, I object to his idea.

The Court: Don't draw a conclusion from the evidence, it is up to the Judge to draw the conclusion. All you can testify is to facts within your own knowledge, and unless you heard the accused express the whole idea behind the thing you cannot testify to anything of that kind because that would be a conclusion, but any facts that you know, either through observing with your eyes or any of your senses you can testify to.

A. Well, the only fact would be then that he told them to go to the classroom and pull them out the classroom. That's when I left.

[fol. 71] Q. Now, who told them to do what?

A. Diamond told the students that we will go through the classrooms and if necessary we will put them out of the classrooms.

Q. And after he made that statement what did you do?

A. I left, you see, to inform my men who were stationed at various classroom buildings to try to prevent the students from going through and disturbing those students who wanted to go to class, so I went over to the new classroom building and I informed them that it was very possible that they would be coming that way, and I went on the upper campus to the Administration Building and I wasn't up there too awfully long before they were coming.

The Court: Before what? I didn't catch that.

A. Before a group of students were coming singing various songs and marching through the classrooms, stomping and things of that nature.

Q. Approximately how many buildings, classroom buildings, were entered by the students after Diamond talked to them?

A. Approximately four.

Q. And what building were you in?

A. I was in the Administration Building.

Q. Did the students come through that building?

[fol. 72] A. Yes, sir.

Q. Explain to the Judge what took place as regards any sounds or unusual activities and so forth?

A. Well, they were marching on the campus and through the classroom singing "We want freedom" and stomping to some type rhythm, and "Let's twist on down to the general classroom building," and words to that effect. Many more that I can't recall, but those were some definitely that they were singing.

Q. Was it a loud—

A. It was very loud.

Q. Did it cause a disturbance out there?

A. Very much so.

Q. Were you all concerned about it?

A. Very much so.

Q. In particular were you concerned about it as security officer?

A. Very much so.

Q. And about how long did that take place, William?

A. It took place, I wouldn't really like to say, but it took I think it was over an hour.

Q. And about how many students were taking place in this marching?

A. Like I said, it was approximately two hundred out front the Union Building, two fifty, something like that, and, of course, as they marched throughout the campus you see [fol. 73] some fell out, some gained them, you see, so—and they were marching through the classrooms. To me at that particular time it sounded like it was far more than two hundred but I couldn't say.

Q. You said some gained them. You mean as they went through some joined them from the classrooms?

A. Correct.

Q. And from your personal observation classes were in progress as they marched through the—

A. They were in progress.

Q. Will you look at these signs, William, and see if you can—just pull them all out if you will. See if you can tell us what these are, where you got them, and so forth.

A. These are the signs that were issued out to various students.

Counsel for the Accused, Jones: Your Honor, I am going to object to any testimony from these signs or placards, because there is nothing on those things to identify that the accused had the placards made or that he had anything to do with them, those could be anybody's signs.

The Court: Let's find out from this witness his familiarity [fol. 74] with the signs, if he recognizes them, so I overrule your objection at this time as being premature.

Counsel for the Accused, Jones: To which ruling I except and ask that a formal bill be reserved.

Q. Now, William, without testifying at all, just thumb through those signs, just look at each one of them.

A. (Witness complies with counsel's request.)

Q. Now, with reference to this particular charge against Dion Diamond, where did you get those signs, William?

A. I got these signs from Barracks B. That is a residence area on the campus.

Q. And when?

A. I got these signs—well I discovered many more than this on that same date.

Q. On what day?

A. On the 31st, and—but these particular signs here I cannot tell when I got them, however, I know that I got these signs on the 31st or the 1st.

Counsel for the Accused, Jones: I object to the testimony, Your Honor, and ask that all the testimony relative to the signs be struck on the ground that the witness has [fol. 75] testified he didn't even know where he got the signs from.

The Court: I thought he testified he got them from Barracks B.

Counsel for the Accused, Jones: He doesn't know when or what date he got them.

The Court: I thought he testified either on the 31st or the 1st of February.

By the Court:

Q. I believe I understood you to say that, is that correct?
A. That is correct, sir.

The Court: I overrule the objection.

By Assistant District Attorney, Wall:

Q. What is Barracks B, William?
A. Well it is a residence area, sir, where male students reside.
Q. And did you find those signs after the demonstration had taken place that you just talked about?
A. That's right, sir.
Q. Now, what occasioned you to go through Barracks B? [fol. 76] A. Well, I had observed earlier—see this building was supposed to be locked by one of the men personnel, and I had observed entrance in this building both female and male and I was very curious, so when I went by to check it out, which is one of my responsibilities, I observed two ladies' pocketbooks in there, and upon doing this wall I left one of my men at the building and I went across to East Hall to see Dean Smith to see if he had a key so we could lock the building up, but through the process of all of this this is when I discovered that they were making signs in this particular building and that the students who had been marching on the campus with this type of sign on their back or in the front of them were being produced in this particular building.
Q. Now, with reference to those signs that you have just examined, are those the signs or signs of a similar nature which you saw being carried by the students during the demonstration?
A. That is correct.

Q. And you are satisfied those are some of the signs that were being used by the students?

A. Very much so.

OFFERS IN EVIDENCE, OBJECTIONS THERETO AND COURT'S RULING

Assistant District Attorney, Wall: Judge, I would like to offer these various items.

[fol. 77] Counsel for the Accused, Jones: Your Honor, I am going to object to the offering of these signs in evidence on the ground that it is immaterial as relates to the crime with which the accused is charged. Second, the witness has not testified whether or not the accused made the signs, didn't testify as to whether or not who made the signs, or that the accused even had knowledge of the signs being made or that he had instructed anybody to make the signs. There is no testimony to that effect.

The Court: Mr. Wall, do you want to be heard on that?

Assistant District Attorney, Wall: Yes, sir, Judge. I don't think it needs much answering as far as the relevancy of the admission goes, I think they go to the weight rather than to the admissibility, although I think they are clearly admissible because this man has been identified as the leader of this group. He said that immediately after [fol. 78] he told them to bust up the classes and pull them out of there, and so forth, the demonstration followed and they did run through the classes and some of them did follow him, and that in his further investigation he found these signs which had been carried by students during the demonstration, so I see nothing to affect the admissibility.

Counsel for the Accused, Jones: Your Honor, but he is not being tried for conspiracy as being a leader of a group. That sounds like a conspiracy. He is not being tried for conspiracy, he is being tried for disturbing the peace. He is not held responsible for what all the rest of the students have done. His own individual act is the one that would apply to him, and all I can see that he has done was to exercise freedom of speech on Southern University campus, as all the rest of the students do in running for Student Government and other offices talk and use freedom of speech

[fol. 79] at the Union Center and at other places on the campus, and that is all he was doing at all times, exercising freedom of speech, and what the others have done he is not to be held responsible for.

Assistant District Attorney, Wall: Judge, he is charged with encouraging.

Counsel for the Accused, Bell: Your Honor, the State hasn't laid a proper foundation for the introduction of these placards; I mean they haven't shown exactly what happened to them between the time of January 31st up until now. We don't know, those signs might have been changed; I don't know whether they have been properly marked and identified, where they were this whole time, and I think to have these placards would be prejudicial, and would greatly prejudice the accused in the presentation of his case. We don't know who all handled those placards. They could have been easily marked by somebody else, altered, to more or less prejudice the accused in this case. [fol. 80] The Court: This is not a case of theft where property has to be identified with that degree of particularity. This witness has testified where he found the signs, the students were in the process of making them there, and he saw either these signs or similar signs being carried by the students after they had been exhorted to go into the classrooms and get the students out of the classrooms, pull them out if necessary. This accused is charged with engaging in and encouraging the students to hold unruly, unauthorized demonstrations. Now, in heeding his words of encouragement it is always admissible to show what happened, that the students, being thus encouraged by the accused, proceeded to stomp and march and sing and carry these signs, even to the extent, to use the words of the accused himself, get them out of the classrooms, pull them out if necessary. Now, under the law there is a presump- [fol. 81] tion that a man is presumed to know the natural consequences of his act, and I think that this accused, after so exhorting these students to swing into the classrooms, to march and to get the students out of there because the faculty is already behind them, and in effect if they refused to leave the classrooms to pull them out, and anything that these students did thereafter after being encouraged by

this accused to do would be admissible, the natural consequence.

Counsel for the Accused, Bell: I know, Your Honor, but it hasn't been shown that these are the identical signs or placards that the students used. I think the witness has said that they were over there manufacturing signs. Now I think it is proper that if he could show which signs were actually being used to carry on this so-called demonstration it would, or may be admissible, but he hasn't testified to that.

The Court: He has said that he either saw those signs [fol. 82] or similar signs being carried by the students, so I say it is not necessary in this type of case, because if we were trying these students for carrying signs which violated the law then that would be a different proposition, but the students are not being tried, the accused is being tried for disturbing the peace by urging them to do an unlawful thing, break up the classes, and, as I said, under 432 every defendant is presumed to intend the natural probable consequences of his act, and the law presumes that after he exhorts them to do what he did do or did tell them that they would resort to this type of activity, carry out his words of encouragement to break up the classes because the faculty was behind them and he was seeing to it, or going to see to it if he could, if the students would cooperate, to just break up the classes at Southern University so there wouldn't be any classes. Now in going about that he [fol. 83] presumed the natural consequences of his act, they might sing, they might march, they might stomp and they might carry signs, and as long as this witness can say that these are similar signs that is enough for the court in this type of procedure, so I overrule the objection.

Counsel for the Accused, Jones: To which ruling we except and ask that a formal bill be reserved. We would like to say that the accused is not here charged with conspiracy; he is not to be held responsible for the acts of others, only the acts of the accused is he held to be accounted for, and we want the record to show that the accused is not being charged with conspiracy or being tried for conspiracy.

Assistant District Attorney, Wall: I would like to ask that this one marked "This is a Freedom Line! Don't Cross It!!" be identified as State-1. This second one, "Let's

Twist Back to the Dorms. No Classes!!" be marked State-2. "Please Stay Out!! Support Your Fellow Students" State-3; [fol. 84] "No Class Today, Sorry" State-4.

Q. William, having testified with reference to January 31st of 1962, the activities of that date, do you have any recollection of having seen the accused, Diamond, out there on the 30th of January?

A. I can't recall, sir.

Q. When did these disturbances commence to the best of your knowledge?

A. On the 31st.

Q. I mean was there more than one day or was that the only day that you had any knowledge of it?

A. Well, they had been going on off and on since December 15th, but with reference to Dion Diamond I can only recall from the 31st to the 1st, that is the only time I remember seeing him.

Q. And after—what happened later on that date of January 31st, 1962 after the students went through the classes?

A. Well, later on that night, approximately about 6:45 sometime, don't quote me on that time but it was—

By the Court:

Q. You can estimate it.

A. Well on or about 6:45 they had a student senate meeting in the old gymnasium on upper campus.

By Assistant District Attorney, Wall:

Q. Did you see Diamond at that meeting?

[fol. 84a] A. I did not see him at that meeting, no.

Q. Did you see him after that meeting?

A. I heard him. I did not see him, I heard him at the new gymnasium which was on the southern part of the campus.

Counsel for the Accused, Jones: I object to who he heard. How does he know who he heard out of five thousand students?

The Court: Well he said he heard him. You can find out on cross-examination how he identified the voice, what

previous familiarity he had with the voice, but he is testifying as a fact that he heard this accused.

Q. And what happened at that time?

A. Well, they had a meeting in the student senate, this is for the whole student body, and through some misunderstanding the student senate was split. In other words part of the student body remained at the old gymnasium, part of the student body went to the new gymnasium.

Q. Where was the authorized meeting being held?

A. At the old gymnasium on upper campus.

Q. Now, what happened with reference to the new gym?

A. Well, the students that were there, until such time [fol. 85] as the president of the student body got there, were those students who opposed to—

Counsel for the Accused, Bell: I object, Your Honor.

Q. Without going into that, William, what did it have to do with this accused, if anything, the meeting at the new gym?

A. It didn't have anything to do with him.

Q. Okay. Now, when is the next time you saw—you related the two incidents about seeing him and then the demonstrations through the classrooms and so forth. When is the next time that you saw Diamond?

A. The next morning.

Q. And where was that?

A. In front of the general classroom building, the auditor's office and the university post office.

Q. And what took place?

A. He was arrested by Mr. Harris, and I drove the car to Baton Rouge.

Q. Did any of the East Baton Rouge Parish Sheriff's deputies take part in that arrest?

A. No, sir.

Q. He was arrested by you and who?

A. He was not arrested by me.

[fol. 86] Q. By whom was he arrested?

A. He was arrested by Mr. Willie Harris who is deputized. I am not deputized. I only drove the car.

Q. Now, what is Willie Harris's job?

A. Well, he is my assistant.
Q. At Southern University?
A. That is correct, sir.
Q. Mr. Harris, what is his—
A. Willie.
Q. Willie Harris?
A. Willie Harris.
Q. You and Willie Harris brought the man down?
A. That is correct, sir.
Q. And you brought him where?
A. Brought him to the East Baton Rouge Parish jail.

Assistant District Attorney, Wall: We tender the witness.

Cross examination.

By Counsel for the Accused, Jones:

Q. On what day did you and Mr. Harris, or Willie Harris, arrest the accused?
A. January—February 1st.
Q. Where did you and Harris make this arrest?
A. Well me and Harris didn't make the arrest, Harris made it.
[fol. 87] Q. Where was the arrest made?
A. In front of the Union Building.
Q. What was the accused doing at that particular time?
A. Well, he had just gotten out of a cab.
Q. He had just gotten out of a cab?
A. That is correct.
Q. What was he doing just prior to getting out of the cab?
A. Well, he was in motion.
Q. He was in the cab, is that what you are trying to say by in motion?
A. I guess that is what you call it.
Q. Where did the cab come from?
A. I don't know. I know it came on the campus.
Q. From what direction did the cab come?
A. From southeast.

Q. Had you seen the accused on the campus any time prior to the time that he stepped out of this cab?

A. That day?

Q. Yes.

A. Only seconds prior.

Q. Just seconds prior?

A. Only seconds prior.

Q. What did he say as he walked out of the cab, to your knowledge?

A. I didn't hear him say anything.

Q. You did not hear him say anything?

[fol. 88] A. That is right.

Q. Now, back to this Barracks B here, you said you found some signs there?

A. That is correct.

Q. Is that a quarter, and when I say quarter is that where others live? Do they live in the barracks?

A. No one was living there at that time.

Q. Do you know of your own personal knowledge whether or not the accused was ever in that building, Barracks B?

A. No, I don't know whether he was there or not.

Q. Did you ever see him there?

A. No, I didn't.

Q. Do you know of your own personal knowledge whether or not the accused had anything to do with the making of those signs that were introduced in evidence?

A. No, I don't know whether he had or not.

Q. Did you see the accused wearing either one of those signs?

A. No, I didn't.

Q. Now, on December 31st, at the time you testified he was making this speech, is that right?

A. That's right.

Q. What was he doing on December 30th?

A. As I aforementioned I can't recall. I didn't know him. In fact I don't know him. I only knew him to recognize him on the 31st. Now, he might have made ten speeches but I didn't see him.

[fol. 89] A. You don't know?

A. That's right.

Q. I say on December 30th—

A. Well I still don't know.

Q. Did you have any type of assembly and meeting and gathering on the campus as of December 30th, from December 15th on?

A. From December 15th on up until this time, yes.

Q. Now, was the accused in any of those assemblies or meetings that they had?

A. Not as I know of, no.

Q. Of your own personal knowledge you don't know of him being there?

A. No.

Q. Your first occasion to know of him being on the campus was January 31st of 1962?

A. That's correct.

Q. Is that right?

A. That is right.

Q. And it is your testimony that you had had several activities and demonstrations from December 15th up until that time, is that right?

A. That's right.

Q. Now, could you of your own personal knowledge know whether or not the activities and demonstrations that was carried on on December 31st was responsible or in response to the speech that was made by the accused or by the [fol. 90] speeches made by those prior to him making any on January 31st?

A. Repeat that once again.

Q. When this demonstration was carried on, this activity, do you of your own personal knowledge know whether or not that they were acting in response to the speech that was made by the accused or by the speeches that had been made all the time from December 15th, 1961 up until that time? Could you separate the difference as to what they were responding to?

A. Well I think that going through the classroom is a direct response of his request.

Q. You think that, but could you say that of your own—do you know that?

A. I can only tell you what I heard and I can tell you what they did a few seconds afterwards. That's all I can

say, so as far as I am concerned I feel that they were influenced by his request.

Q. Did you hear him say make those signs?

A. Like I said, no.

Q. But the signs were made?

A. That is correct.

Q. Do you know whether or not those signs were made before his speech or after his speech was given?

A. They were made before.

Q. Thank you.

A. And some were made afterwards.

[fol. 91] Q. Thank you. When you say some fell out, what do you mean some fell out?

A. Just what I said, some fell out.

Q. What does that mean, that they fainted or collapsed or something?

A. Well some did that too.

Q. Where was the falling out done?

A. On the campus.

Q. Whereabout on the campus?

A. I can't recall any specific place.

Q. Could you name anyone that fell out, collapsed, as a result of this?

A. No.

Q. Do you have an estimate of how many collapsed as a result of this speech he gave?

A. I didn't say it was because of the speech he made.

Q. Well you say they fell out.

A. What I had reference to technically was that as they marched through the campus some students became discouraged or afraid and they automatically fell out of this line of marchers, whereby as they progressed throughout the campus some, being curious or whatever the case may be, joined in the line of march. That is what I had reference to technically.

Q. Did the accused at any time go into these buildings and march through?

[fol. 92] A. I never witnessed him in the building at all.

Q. Beg your pardon?

A. I never witnessed him in the building at all.

Q. By that do you mean that you did not see him in either of the buildings?

A. I did not see him, that is right.

Q. Had he gone into any of the buildings would you have seen him? You being the security officer it was your duty, wasn't it?

A. Well you can be a security officer and don't see everything, you see.

Q. So of your own personal knowledge you don't know whether or not he went into either of the buildings, is that right?

A. I could not swear that he went into a building because I did not see him in a building.

Q. Now, let's get back to this time here. You say the second gathering was at 12 o'clock, is that right?

A. During the noon hour.

Q. The noon hour. Were classes going on at 12 o'clock noon?

A. No.

Q. Beg your pardon?

A. No.

Q. No classes at that time. Now, when was the first—

A. I would like to stipulate there on or about noon hour and no exact point, but it was in there. There might have been classes change around ten or fifteen minutes of the [fol. 93] hour and then take up—they start going to classes ten or fifteen minutes at the beginning of the hour, in that particular time.

Q. It was during that particular time?

A. That is correct.

Q. Now, was that ten minutes before 12:00 or ten minutes after 12:00, I don't get this.

A. Well I am going to leave it like this, it was on or about the noon hour.

Q. Then would you be willing to leave it that it was during the time that classes was exchanging that this activity of the coming out and going to classroom was taking place?

A. Yes, with reference to the latter portion of it, the latter portion of it.

Q. Which in the ordinary course of things they would have been exchanging classes, is that right?

A. The latter portion of it.

Q. Now, it is my understanding that on this 31st that most of this activity or the speaking was done around the Union Building, is that right?

A. That's right.

Q. And it is your testimony approximately two or three hundred students were there, is that right?

A. Yes, that is my testimony.

Q. Now, isn't it customary and usual, a regular thing, that around the Union Building you have two or three [fol. 94] hundred students out of five thousand always around there?

A. No.

Q. About how many do you have?

A. I wouldn't care to give a figure, but it is not that many, nor are they assembled in such a nature as they were assembled there.

Q. How were they assembled?

A. They were in a group.

Q. Well when they are in the Union dining hall, whether they are in the south wing or north wing aren't they in groups there?

A. Sure.

Q. Now, isn't that customary?

A. Yes.

Q. Beg your pardon?

A. That is correct.

Q. Then what was happening, them being assembled, wasn't nothing unusual then for two or three hundred to be around the student center, is that right?

A. It was unusual to me.

Q. Unusual to you. What made it so unusual to you?

A. Because they had a speaker.

Q. Now, when the fraternal organizations or the sorority organizations, don't they have speakers around the Union Building and you have that congregation?

A. That is correct, but with the permission of the dean [fol. 95] of college.

Q. Haven't you seen that?

A. With the permission of the dean of college to go through their initiation and whatever the case may be, yes.

Q. Do you know of your own personal knowledge whether or not he had or did not have permission to make these speeches?

A. Technically at that time I knew he didn't have.

Q. I don't know what you mean when you come here with all these technicalities.

A. You want to know?

Q. Yes.

A. Because I had checked it out with the highest reliable source, the administrative body of the university.

Q. Now, what did the accused do other than to make a speech?

A. That is all I witnessed him doing. He just made a speech.

Q. Just made a speech?

A. That's right.

Q. And was any speeches made by any other person?

A. No, not as I can recall.

Q. Now, this speech that was made was made at the Student Union Center, is that right?

A. No, it wasn't made at the Student Union Center.

Q. Where was it made?

A. It was made out in the quadrangle, you know, in front [fol. 96] of the Student Union Building.

Q. Oh, in front of the Student Union Building?

A. Uh-huh.

Q. It was not made in a classroom was it?

A. No.

Q. Is it your testimony it was not made in a classroom?

A. It was not made in a classroom.

Q. Now, how long prior, that is before January 31st, 1962, had these students been boycotting the classes?

A. I would say approximately three or four days, something like that. They were—let's see, I disremember what dates the 31st and the 1st were, whether it was Monday or Tuesday, whatever the case may be.

Q. Now, do you recall the demonstration of December 15th, 1961?

A. That's correct.

Q. Did they boycott the class that day?

A. No.

Q. They all went to class that day?

A. Well I can't ascertain who was boycotting and who was not boycotting.

Q. I know you couldn't, but I mean did the students go to class that day?

A. I am sure some did.

Q. Did some go to class on December 31st?

A. I am sure that some did too.

[fol. 97] Q. Well, is it a distinction between what happened on December 15th, 1961 and January 31st, 1962? Is there a distinction between the activities of the students of those two days?

A. They were different by nature.

Q. And what was the character—

Assistant District Attorney, Wall: Judge, I haven't objected, but I think I know what he is driving at, but I object at this time because I don't think he is called upon to give an opinion as to a distinction in character between a demonstration of the 15th and one on the 31st when the only one we are concerned about here today is the one that took place on the 30th and 31st. He testified in detail about that one on the 31st, and I submit that if he wants to show a distinction he can put it on by his own witnesses.

Counsel for the Accused, Jones: Your Honor, what the accused is saying is that some went to class and some did not go to class of common knowledge, and he knows that [fol. 98] from December 15th, and every day, you have some students going to class and some not going to class. There is no difference there than in every other day. Everything was normal as far as this speech was concerned and the activity in which the accused engaged because it is every day that some students go to class, they either go because their mother told them to go or their parents told them to go, and some stay away because they are sick and some don't know their lessons. There is nothing unusual about some going and some not going.

Assistant District Attorney, Wall: I think it is up to the court to decide—

Counsel for the Accused, Jones: Something unusual must be shown.

Assistant District Attorney, Wall: —if it is usual or unusual for a demonstration that has been testified about here is perfectly all right or not. I don't think this witness is called upon to decide that.

[fol. 99] The Court: I don't think that this witness has to evaluate the testimony, that is to evaluate the occurrences or the activities, compare them. He can testify what he observed in December and also what he observed on January 31st. Now, of course, as far as this case is concerned, whether the students did anything at all is somewhat beside the point because they are not being charged, the defendant is being charged here with encouraging them to do things. Now they may not have done anything, but he is charged with engaging in and encouraging these students to hold unruly and unauthorized demonstrations. Now whether the students were receptive to his words of encouragement is something else again.

Counsel for the Accused, Jones: Your Honor, what we are trying to show is that from December 15th up until January 31st, 1962 we found this activity going on. Now, the accused wasn't there to encourage them.

[fol. 100] The Court: He is not charged with that.

Counsel for the Accused, Jones: He was not there to encourage them—

The Court: He is not charged with that.

Counsel for the Accused, Jones: You had the same activities at the same time.

The Court: Yes, but he is charged with doing it on a specific date, and that is what I am concerned with here. Now others might have done the same thing that he did back in December, but that is not before the court at this time.

Counsel for the Accused, Jones: Your Honor, what we are trying to say, you cannot draw a line as to show whether or not the actions of these students was responsive to what he said that day or responsive to the whole pattern of facts.

The Court: Well, as I have said, as far as this court is concerned under this particular charge here it wouldn't [fol. 101] make any difference to me whether they responded in any way to his words of exhortation. He is charged with engaging and encouraging them to do things. Now

whether they did it or not is beside the point, so I don't think it is proper for this witness to give you the line of demarcation or characterize the difference, but I would permit you to ask him just what he observed back in December if you want to attempt to show that the demonstrations back at that time were no different from the ones which ensued after this defendant encouraged them on January 31st to be unruly and march about the campus.

Q. Did you observe any difference between what happened on January 31st, 1962 and what had happened from December 15th, 1961 until January 31st, 1962?

A. Did I observe any difference?

Q. Yes.

A. Yes, they didn't march through the classrooms.

Q. Beg your pardon?

A. They didn't march through the classrooms.

[fol. 102] Q. Did the accused march through the classrooms?

A. You asked me about the group, right? I didn't know him on December 15th.

Q. Yes, I am asking you about the group.

A. I said they didn't march through the classrooms.

Q. They did not?

A. They did not march through the classrooms, but on January 31st they marched through the classrooms.

Q. Was the accused in the group that marched through the classrooms?

A. As I forestated, I cannot say that he was because I did not see him.

Q. Now, I understand that this arrest was made by Harris or by you and Harris, whatever the case might be.

A. Well we will get that clear. It was made by Mr. Harris, not me.

Q. Weren't you with him?

A. I was there.

Q. You said he is your assistant, huh?

A. That is correct.

Q. You are not his assistant?

A. No, he is my assistant.

Q. In other words you are the big boss?

A. We all know this, you have already stated it once, that if you aren't a law enforcement agent, deputized, or whatever, there are a few things you can do, right?
[fol. 103] Q. Right.

A. Okay, well I was not deputized so I didn't make the arrest.

Q. Don't worry about what we stated, you worry about whether or not you was the big boss out there or not. Who is the big boss, you or Harris?

A. Well apparently Mr. Harris is.

Q. When you say that he is your assistant then I don't quite get you. Explain that to me.

Assistant District Attorney, Wall: Judge, I object to his arguing with the witness. I don't know why Attorney Jones wants to keep—who cares who the big boss, as he puts it, is. He clearly explained the facts, and if the court wants to draw any thoughts or determination from those facts I think it is the prerogative of the court, but we are not to sit up here and listen to Attorney Jones argue with this witness about who the big boss is. He explained out there that he is the campus security officer in charge, that the man works for him; that this other man is a sheriff's deputy, that he is not a sheriff's deputy. Now, if it makes [fol. 104] any difference I think the court should draw conclusions from that.

Counsel for the Accused, Jones: Your Honor, he says he is the campus security officer and that Willie Harris was his assistant: that he at the time was with Harris, at the time that the arrest was made. Now, if he is the big boss and Harris is his assistant then he tells Harris what to do, and the arrest then that Harris made would have been made at his instructions, and whatever act that Harris done would be his act as well, if he was the big boss.

The Court: I don't go along with that argument. You have a right, of course, to bring out whether or not if he as a fact did instruct Harris to make the arrest or whether Harris did it on his own. You take the situation of the Governor of the State, he is the head of the Executive Department of the State. Now he doesn't make arrests, but some State Trooper in the capitol building has the authority

[fol. 105] to make arrests. If some offense is committed there a State Trooper makes the arrest. Now the big boss, the Governor, would be right there, but the Governor is not making the arrest because he doesn't make arrests, a peace officer makes the arrest, and if this Harris was a peace officer or he was authorized to make the arrest, whether or not this man—if he witnessed the demonstration itself whether or not this man here on the witness stand instructed him to make the arrest or not, and as to whether or not this man did instruct him to make the arrest, is of no consequence in this case. He may be sued civilly for bringing about an arrest if he didn't have the authority to do it, but that is not before the court now. If the accused was lawfully arrested by somebody who had the authority to make the arrest that is all the court is concerned with, so I wouldn't argue with the witness about being the big boss or anything like that, but you can ask him the circum-
[fol. 106] stances of the arrest, whether Harris made it on his own or whether this witness instructed Harris to make the arrest, or vice-versa.

Q. When was this arrest made?
A. Approximately 8:30.
Q. 8:30?
A. Approximately 8:30.
Q. On what date?
A. On the 1st of February.
Q. Beg your pardon?
A. On the 1st of February.
Q. February 1st. For what reason was this arrest made, do you know?
A. You will have to ask someone else, I don't know, I didn't make the arrest.
Q. Did you order the arrest?
A. No, I didn't.
Q. Did you request the arrest?
A. No, I didn't.
Q. Did you see anything that would—that you would have arrested—. Did you see the accused doing anything at the time that the arrest was made that you would have arrested him for?

[fol. 107] The Court: You mean had he been an officer?

Q. That's right, had you been an officer authorized to make the arrest.

A. Had I of been authorized I would probably have made the arrest myself.

Q. For what reason would you have made the arrest?

A. Well I don't know. Like I told you, I don't know the reason.

Q. If you had been an officer at that same time—

A. I probably would have made the arrest.

Q. —that Harris made the arrest you would also have made that arrest, is that right?

A. That's correct.

Q. But without reason you would have made it?

A. I would have known.

Q. You would have known what?

A. I would have known why the arrest was being made.

Q. Well what was he doing at that particular time that would warrant you making that arrest?

A. I think I told you the action of this individual, you know, on the morning of February 1st.

Q. Talk a little louder, I am having difficulty hearing you.

A. I said I think I told you the action of this individual on the morning of February 1st as he got out the cab and [fol. 108] he was arrested by Mr. Harris, and that's all I know.

Q. Tell me this, do you just arrest everybody who drives up—

A. I don't know, I—

Assistant District Attorney, Wall: Judge, I object.

Counsel for the Accused, Jones: He said he would have done it had he been authorized.

Assistant District Attorney, Wall: I don't care what he said, the fact is that he is not authorized.

The Court: That is speculation too, that is not evidence, what he would have done when he doesn't have the authority to make an arrest, and the court is not concerned about the arrest. This is not the wrongful execution of a search warrant or anything like that. The arrest might have been

illegally made, that doesn't make any difference as to the guilt or the innocence of the accused in this case. He might have been arrested with a warrant, without a warrant, jus-
[fol. 109] tifiably or unjustifiably, but he is charged with committing this offense on this particular date, that is what I am concerned with, not the manner of his arrest or that he was ever arrested. He could have just volunteered himself, come on down and given himself up, that wouldn't make any difference as far as the court is concerned because that is really not before the court.

Q. What would you consider the accused to have done that was unruly?

Assistant District Attorney, Wall: I object.

The Court: In view of the objection, this witness is not called upon to evaluate the actions of the accused, it is up to the court to decide whether his actions constituted a violation of the law. All a witness can testify is to facts within his own knowledge, what he saw, what he observed, and not his appreciation of the legal effect of what he
[fol. 110] observed, so I sustain the objection.

Q. Do you know whether or not anybody got hurt as a result of the speech that the accused made?

A. No, I can't recall anyone getting hurt.

Q. Do you know whether or not any fights took place as a result of the speech that the accused made?

A. No fights.

Q. Do you know whether or not they tore up all the books and desks and chairs and seats and just turned the school out as a result of what happened?

A. I would not say it turned the school out, but I would say it turned out some classes.

Q. Turned out some classes. Were you in any of those classrooms?

A. I was in and around them, that is correct.

Q. Beg your pardon?

A. I was in and around them, some of them.

Q. Were you on the inside when any of the classes were actually interrupted?

A. Yes, I was inside the Administrative Building.

Q. What class was that?

A. I don't know what class it was, I don't know what instructor or what the case may be, but I happened to be in the building as they were coming through holding the door so that they couldn't come down through the bottom [fol. 111] and go over to another building.

Q. You don't know the instructor?

A. No, no, I wasn't interested in the instructor.

Q. You don't know the classroom?

A. I could show it to you.

Q. What classroom was it?

A. You probably wouldn't—it was in the Administrative Building on the second floor, the last room on the southwest side.

Q. Were you inside the class or outside in the hall?

A. I was in the hall.

Q. Do you know whether or not the class was going on on the inside?

A. The class was in session.

Q. You were not in the classroom?

A. No, I was not in the classroom.

Counsel for the Accused, Jones: That's all.

Assistant District Attorney, Wall: That's all, thank you.

Witness excused.

(Court recessed for lunch.)

[fol. 112] Marvin L. Harvey, called as a witness on behalf of the State, having been first duly sworn, testified as follows:

Direct examination.

By Assistant District Attorney, Wall:

Q. State your name, please.

A. Marvin L. Harvey.

Q. And what is your occupation?

A. Dean of Students, Southern University and A. & M. College, Baton Rouge, Louisiana.

Q. Southern University and the campus surrounding it, is that in East Baton Rouge Parish?

A. That is.

Q. How long have you been associated with Southern University, Dean?

A. Eighteen years, sir.

Q. How long have you held your present position?

A. Seventeen years, sir.

Q. And that is dean of men?

A. Dean of students.

Q. Dean of students. Dean, the State of Louisiana has charged by way of bill of information that on January 30th and January 31st of 1962 this accused, Dion Tyrone Diamond, caused a disturbance out there on the campus at Southern University. Do you recognize the accused in this case?

A. I do.

Q. Do you recall with reference to this particular charge [fol. 113] as having occurred on January 30th and 31st of this year, do you recall the first time that you saw the accused about on those dates?

A. On the 30th I saw him speaking at a student gathering out on the campus.

Q. And where did that meeting take place?

A. In the vicinity of the Student Union Building.

Q. Approximately how many students were present?

A. I would say between three and four hundred.

Q. And who was the principal speaker or leader of the group at that time?

A. Mr. Diamond was speaking when I came to the meeting.

Q. Is that the accused seated here?

A. That is correct.

Q. What was the tenor of his speech at that time?

A. Two things that I recall; obviously I didn't take any notes of the meeting at the time. He was talking about the importance of demonstrating and staying out of classes.

Q. And that was on Wednesday, the 30th of January?

A. That is correct.

Q. Approximately what time was that, Dean Harvey?

A. The first time was in the morning, I would say between 9:30 and 10 o'clock.

Q. What, if anything, developed from that particular meeting in the morning?

[fol. 114] Counsel for the Accused, Jones: I object to that question, what developed from that particular meeting.

Assistant District Attorney, Wall: I will withdraw the question.

Q. About how long did you observe the meeting in progress, Dean?

A. About fifteen minutes.

Q. At the expiration of approximately fifteen minutes did the group move anywhere as a body or did they break up?

Counsel for the Accused, Jones: I object.

Q. Well what happened, Dean?

A. The students dispersed, some of them went in various directions on the campus.

Q. Now, on that date, Dean, January 30th of 1962, was that a regular class day for Southern University?

A. It was.

Q. In your capacity as Dean of Students do you have any responsibilities toward or with respect to student gatherings on the campus?

A. I do.

Q. With reference to the meeting on the morning of January 30th of 1962 had you authorized that meeting?

[fol. 115] A. I had not.

Q. And with particular respect to this defendant, Dion Tyrone Diamond, had you authorized him to hold that student meeting on the morning of January 30th?

A. I had not.

Q. What was the general nature of that meeting on the morning of the 30th with respect to any noise? Was it a quiet meeting, loud, or so forth?

A. There was response, vocal response, on the part of some of the students who were listening, clapping, expressions of approval.

Q. Now, then you said that meeting dispersed. Did you happen to see the accused again that date, January 30th?

A. No, not again that date.

Q. Was there an authorized meeting that night of students?

A. Not on the 30th; on the 31st.

Q. Now, that is the only time you recall seeing the accused on the 30th then was the meeting that you discussed?

A. That's right.

Q. Were there any demonstrations on the campus that day by the students of any kind?

A. On the 30th or the 31st?

Q. On the 30th.

A. On the 30th there were students walking around the campus with signs.

Q. Approximately how many?

[fol. 116] A. I would estimate about forty.

Q. Now, was that subsequent to the meeting conducted by Diamond?

A. It was in the afternoon.

Q. Of the 30th?

A. About 1 o'clock in the afternoon.

Q. On the date of the 30th?

A. That's right.

Q. Now, did you happen to see the accused on the 31st of January?

A. I did.

Q. And where did you first see him on that date?

A. In front of the Union Building.

Q. And what was going on there, Dean?

A. There was a gathering of students, about between four and five hundred I would judge.

Q. And approximately what time?

A. This was 9:45.

Q. Where were you standing with respect to the crowd?

A. Approximately—at the beginning approximately fifty feet.

Q. From the edge of the crowd?

A. That's right, sir.

Q. Tell the Judge what developed, Dean, at that time?

A. I started toward where Mr. Diamond was speaking to the group in order to inform him that he did not have [fol. 117] permission to have a meeting, but by the time I got there he had ceased speaking and the group dispersed.

Q. And that meeting, from the time you first observed it until the group dispersed, took about how long?

A. Oh, between fifteen and twenty minutes.

Q. And what was the tenor of the speech made by Diamond on that date?

A. The same thing as the previous day.

Q. With respect to the meeting on the morning of January 31st that you have just testified about, had you authorized that meeting?

A. I had not.

Q. And in particular had you authorized the accused to hold such a meeting?

A. I had not.

Q. And what developed later in the day, if anything, following that?

A. There was another meeting about 12:30 that afternoon, between 12:30 and 1 o'clock. Later on in the afternoon, approximately about 2 o'clock, students paraded through the classroom buildings with signs and so forth. That night there was an official—

Q. Before you go any further, Dean, with regard to the second meeting, now where was that held, around 12:30 or so?

A. Same place.

[fol. 118] Q. And who was the leader of that meeting?

A. Mr. Diamond was speaking to the group.

Q. And what was the nature of the—

A. It concerned principally the boycotting of classes.

Q. And then what followed, Dean?

A. Approximately an hour later student groups began to move around in the classroom buildings.

Q. Were classes being conducted in buildings at that time?

A. They were.

Q. What was the general effect of the students moving through the classrooms, and so forth?

A. Well, it was rather noisy and it was—some students left classes.

Q. You observed this yourself, Dean Harvey?

A. In one building.

Q. What building was that?

A. In what we call the Academic Building. It happens to be where my office is located.

Q. And were there classes being conducted in that building?

A. There were.

Q. Was it just an orderly procession or was it a noisy, raucous sort of a thing?

A. It was noisy.

Q. Was it disturbing to you and to the people around you?

A. Yes, I would say so.

Q. In other words were you all fearful it might get out of [fol. 119] hand, Dean?

A. I really can't answer that because it is difficult to put yourself back in a situation five months ago. We were concerned about it, yes.

Q. Approximately how many were walking or marching or demonstrating through the classrooms?

A. I couldn't estimate that. It was certainly over a hundred persons.

Q. About how long did that marching and procession and so forth take place?

A. Over a half hour.

Q. What happened after that, Dean?

A. Immediately after that?

Q. That's correct.

A. I have no recollection of anything happening after that. The movement was around the complete campus, that is I could see students going from one building toward another, but what happened after that as far as my personal observation I would not be able to state to you.

Q. Had you given Diamond any authority to conduct this procession and demonstration throughout the classrooms?

A. No, I had not.

Counsel for the Accused, Jones: I object, Your Honor. There has been no testimony to the effect that Diamond [fol. 120] conducted this procession, there is no testimony to that at all. The only testimony that we have is that Diamond gave several speeches, one on the 30th and one on the 31st, in front of the Union Building. As to a proces-

sion being led or conducted by Diamond there is no testimony to that effect.

The Court: He just asked him the question, did he give him that. Now whether or not he can prove—

Counsel for the Accused, Jones: But the question, Your Honor, presupposes that he has testified to the fact that Diamond conducted the procession or led the crowd or the students.

The Court: Well, I don't take it that way, it doesn't affect the court that way. He asked the question did he give him permission to conduct that procession. Now whether or not he has proved by this witness or other witnesses that Diamond did conduct the procession is some-
[fol. 121] thing for the court to decide, so I overrule the objection.

Counsel for the Accused, Jones: To which ruling I except and ask that a formal bill be reserved.

Q. Subsequent to the two occasions that you have testified about, Dean Harvey, did you again see Diamond on that date of January 31st?

A. Yes, that evening ab[illegible]6 o'clock.

Q. And where was that?

A. In the auditorium gymnasium.

Q. And what occasioned that?

A. This was an official student body meeting called by the Southern University Senate.

Q. And who authorized that meeting?

A. I did.

Q. Did anything unusual develop at the meeting?

A. Mr. Diamond attempted to speak at the meeting.

Q. And was he allowed to speak?

A. He was not.

Q. Was there any—did that create any disturbance?

Counsel for the Accused, Bell: I object to that, Your Honor.

[fol. 122] Q. Just tell the Judge what happened at the meeting please?

A. The president of the student senate was presiding. After I made a preliminary statement to the student body the president of the student senate presided, and after the

president of the senate had made a statement Mr. Diamond attempted to speak, and there was a conversation between the president of the student senate and Mr. Diamond. Mr. Diamond did not speak however.

Q. Just go ahead and tell the Judge what happened.

A. I was not close enough to hear, Your Honor, the conversation between the president of the student body and Mr. Diamond. However, I did hear the student body president state that Mr. Diamond would not be allowed to speak and why.

Q. Did you hear any other statements made there in the presence of this accused by anyone to the crowd in general?

A. Yes, after the president of the student body did not let Mr. Diamond speak then someone in the group said, "Let's go out and have our own meeting."

Q. And what followed?

Counsel for the Accused, Jones: Your Honor, the answer is not responsive to the question. He asked whether or not [fol. 123] Diamond, the accused, made any statement.

Assistant District Attorney, Wall: I didn't say that. I said what was made in the presence of the accused.

The Court: Any statement made in the presence of the accused, in the presence and hearing of the accused, that would be admissible.

Counsel for the Accused, Jones: That would be. Would you mind reading the question back, Mrs. Brady?

(Question read: Did you hear any other statements made there in the presence of this accused by anyone to the crowd in general?)

The Court: That would be admissible.

Assistant District Attorney, Wall: Read his answer.

(Answer read: Yes, after the president of the student body did not let Mr. Diamond speak then someone in the group said, "Let's go out and have our own meeting.")

Q. And continue, Dean Harvey, what followed?

[fol. 124] A. Approximately a hundred and twenty-five or more students left the auditorium.

Q. Did Diamond leave?

A. Yes.

Q. Did you see him at all after that, Dean Harvey?

A. There was a gathering down in front of the new gymnasium, and after the student body meeting was over I went down to the meeting, to the gathering in the vicinity of the new gymnasium, and saw Mr. Diamond there on the ramp from which the persons were speaking.

Q. Did you hear him make any speech at that time?

A. I did not.

Q. About how many people were there?

A. Several hundred.

Assistant District Attorney, Wall: Tender the witness.

Cross examination.

By Counsel for the Accused, Jones:

Q. This speech that you heard, Dean Harvey, down on the ramp, who made that speech?

A. I do not know.

Q. Was it the accused, Dion Diamond?

A. I did not hear him speak there.

Q. Now, did you hear the speech at all?

[fol. 125] A. Yes.

Q. What was the tenor and nature of that particular speech?

A. The part I heard, I did not hear all of it, Mr. Jones, but the part of it that I heard was concerned with the importance of citizenship rights.

Q. Do you recall anything particular that was said by the speaker at that particular meeting on the ramp?

A. No, I do not.

Q. But you recall the nature and the tenor of it as being related to the right of the citizens, is that right?

A. That is correct.

Q. Now, in this meeting that was authorized by you and was held in the auditorium gymnasium at 6 o'clock on the evening of the 31st of January 1962, who gave the speech there?

A. The president of the student body.

Q. What was the nature and the tenor of his speech?

A. The major part of it was concerned with the return to classes.

Q. He was requesting that they return to classes, is that right?

A. That's right, speaking for the student senate.

Q. Now, I understand that at that particular meeting which was held in the auditorium gymnasium you also gave a preliminary statement,—

A. That's correct.

[fol. 126] Q. —is that what you testified?

A. Yes.

Q. What was the nature and the effect of your particular statement, or what did you say particularly?

A. My statement was concerned with the fact that the president and the senate of Southern University had been given permission to hold this meeting; that it was the only official student organization qualified to call a student body meeting through the usual procedures for calling such meetings, and that no other individuals or no other group had either the permission or the authority to call a student body meeting.

Q. And in response to that you heard someone in the crowd say, "We will hold our own meeting," is that right?

A. No, not in response to that, Mr. Jones. I made that statement and then the president of the student senate took over. It was after the president of the student senate had had his conversation with Mr. Diamond that the statement was made, "Let's have our own meeting."

Q. Who made that statement?

A. I do not know.

Q. Do you know whether or not it was the accused?

A. I do not know.

Q. Now, you heard the accused speech at or about 9:45 on January 31st, 1962 in front of the Student Union Building, is that right?

[fol. 127] A. That is correct.

Q. What was the tenor and the nature of that speech?

A. It was concerned with the boycotting of classes.

Q. Do you recall anything he said particularly?

A. I do not.

Q. Did you hear all of his speech on that particular day?

A. No, he was speaking when I got there.

Q. Did you hear him at any time say, "Drag them out of the classroom if they don't come out"?

A. No, I did not.

Q. Did you hear him at any time say that, "We are exercising our freedom" or speaking for freedom?

A. I did.

Q. Now, when you testified that the students after hearing the speech given by the accused went in various directions, and by that what did you mean, I mean do you mean that they went to class or did not go to class?

A. I don't know whether they went to classes or not. They went in different directions, and, as you know, the classrooms are in various sections of the campus as well as the dormitories.

Q. Well, those students that went in various directions after hearing this speech given by the accused, to your knowledge do you know whether or not they went to class or did not go to class?

A. I do not know.

[fol. 128] Q. Now, on the morning of January 30th you heard a speech there in front of the Union Building also, is that right, sir?

A. That is correct.

Q. And that was about 9:30?

A. To the best of my recollection, yes.

Q. What was the nature of that particular speech, sir?

A. It was concerned with the boycotting of classes.

Q. And after that speech was given what happened?

A. Well, there was a dispersal of the students after it was over.

Q. Do you know whether or not they went to class or did not go to class?

A. Whether the particular students who were there at the meeting--

Q. Yes.

A. No, I do not know.

Q. What is the enrollment of Southern University, student enrollment I have reference to?

A. Four thousand, better—about forty-four hundred.

Q. Around the student center don't they usually meet around there, sir, gather around the student center? I have reference to the Student Union Building?

A. Yes, they do.

Q. That is a customary thing for them to gather and meet around there, isn't it, sir?

[fol. 129] A. Not to have meetings, Mr. Jones, I am sorry I did not understand you; not to have meetings there, no. Students would be standing around talking either there or in the snack shop or in the union itself, but not in the quadrangle.

Q. How many students usually gather around there from time to time off and on?

A. Oh, it would depend on the day and the hour.

Q. Around that hour and on that particular day, the 30th and the 31st?

A. Mr. Jones, I couldn't state that because I have never made a survey of the approximate number that would be around there at a particular hour or a particular day. I would know, of course, that on a Tuesday or a Thursday that students would have fewer classes and there would likely be more around there than on a Monday, Wednesday or a Friday.

Q. What day of the week was this, do you recall?

A. I believe this was on a Tuesday.

Q. Was this crowd that you saw around there, around the Student Union Building on that particular day, was that any larger than usual?

A. I would say so.

Q. Very much?

A. Considerably.

[fol. 130] Q. As to the particular type of speech that the accused was giving, and particularly the part that you heard, did you have any particular objection to it?

A. The part on the boycotting of classes definitely so. On the matter of freedom and citizenship rights I would agree with it one hundred per cent.

Q. What did he say particularly about boycotting the classes?

A. The students were urged to stay out of classes until certain situations were resolved.

Q. Did he make mention of those certain particular situations, sir?

A. Yes, sir, it was concerned with some other students.

Q. What students were they, sir?

A. They were students who had been involved in—who had been arrested several weeks previously.

Q. Those were the students that were arrested for—

Assistant District Attorney, Wall: I object.

Counsel for the Accused, Jones: I haven't asked the question yet.

Assistant District Attorney, Wall: No, but you are getting ready to testify.

Counsel for the Accused, Jones: He doesn't know what I am going to ask him.

[fol. 131] Assistant District Attorney, Wall: Yes, I do.

The Court: Don't answer the question, Dean, until the State has an opportunity to object, but I am going to give counsel an opportunity to complete the question. Complete your question and just don't answer it until I tell you to.

Q. Were those the students arrested for taking part in anti-segregation demonstrations?

Assistant District Attorney, Wall: Judge, I object to it on the general ground that I don't think that has got anything to do with this. If he says they were objecting out there on the campus because other students were arrested for causing a disturbance of a similar nature, or even of a dissimilar nature, would have nothing to do with the guilt or innocence of Dion Tyrone Diamond on the 30th and 31st of January out there.

[fol. 132] Counsel for the Accused, Jones: Your Honor, we are trying to show all this accused was doing was exercising freedom of speech.

Assistant District Attorney, Wall: Judge, I object to any speeches by Mr. Jones. Mr. Jones hasn't been in court in about three weeks and I know he wants to sound off, and it looks like we could get to the point and at least argue whether it is admissible or not without making a speech about freedom and all that sort of thing, and I

object to this rehash of what these people were doing down there.

The Court: Relate your objection to the point at issue and let's don't argue the merits of the case. I won't cut you off from urging your objection and the reason for your objection, but let's don't get into a latitudinarian dissertation on freedom, rights, and so forth. I will permit you to argue any point of law, I don't want to cut you [fol. 133] off on that, and I see no objection on cross-examination if this witness knows the answer to the question as to what those particular students were arrested for. It doesn't make any difference in this case, but I see no objection to your asking the question.

Counsel for the Accused, Jones: Would you read the question back?

Q. (Question read: Were those students arrested for taking part in anti-segregation demonstrations?)

A. Yes.

Q. Dean Harvey, are the students at Southern University free to hold discussions and meetings to discuss freedom and equality without getting express permission from the official body of the school, sir?

The Court: You mean public meetings on the campus, is that what you have reference to?

Counsel for the Accused, Jones: Assemble on the campus in front of the student center as Dion Diamond and the rest of them were doing there discussing freedom.

[fol. 134] The Court: You have reference to a public meeting on the campus?

Counsel for the Accused, Jones: Yes, sir, just stand out in front of the student center and discuss their problems and talk about them.

A. If you mean two or three students standing around talking that is one thing, Mr. Jones; if five or six hundred would be standing around listening to a speech or making speeches that would be quite another, that would—. A large gathering of students would be considered a meeting, and for that they would have to receive permission and authorization from the office in which I work to have such

a meeting. It wouldn't make any difference whether they were discussing freedom or how to get rid of mosquitoes.

Q. Now, Dean, have any such meetings prior to January 30th, 1962 been held by any of the Southern University students on the campus of such nature?

A. Without permission?

Q. Yes.

A. Yes.

Q. Did you have occasion to hear any of those speeches, sir?

A. Yes, I did.

[fol. 135] Q. What were they about?

Assistant District Attorney, Wall: Judge, I object.

The Court: I sustain the objection on that, because if the law has been violated in the past, regardless of what was done about it has no bearing on the alleged violation in this case. In other words if those in charge of the university pursued the matter further and brought the cases to court or whether they didn't bring them to court would be of no significance.

Counsel for the Accused, Jones: Your Honor, the accused here is being charged with violating the law in that he disturbed the peace by encouraging other students at Southern University to hold unruly mobs; also unauthorized demonstrations on the campus and that he led them into these demonstrations. Now, the question is if these people were so unruly, or if they went into the buildings [fol. 136] and demonstrated or marched around the campus carrying the signs and placards reading "Freedom" or "Let's March on Baton Rouge," or whatever it was, I am not in a position to say, nor are any of us in a position to say that they were responding to the speech of the accused or to those prior speeches that were given by others.

The Court: Well that wouldn't make any difference to me. If he engaged in those activities whether he was persuasive or whether they thumbed their noses at him or ridiculed him, it wouldn't make any difference. Whether they were responsive to his exhortations makes no difference.

Counsel for the Accused, Jones: Your Honor that would be true if he were charged here with conspiracy, but he is not charged with conspiracy, he is charged with disturbing the peace. Now he didn't commit these acts, he did not go into the classrooms as the testimony has been up to now. [fol. 137] The Court: He doesn't have to actually go in there. If I shoot a man in a building I don't go in the building, but I am guilty of murder if I did so without any rhyme or reason. I don't have to go in the building; he didn't have to go in the building. If he urged the others to engage in the boycotting of classes, and whether they responded to his requests or his urgings is beside the point. It is what he himself did and whether that is calculated under the law to disturb the peace. Now, as I say, some speakers are more persuasive than others. I don't know whether he is a persuasive speaker, but I have to take the testimony of each witness as to what he did on this occasion, and the resulting action, since an accused person is presumed to approve of the natural consequences of his act, whatever followed is admissible in evidence, but it wouldn't have to follow that there was actual boycotting or that there was actual demonstrating as long as he urged [fol. 138] it, and I am not making this as an invidious comparison, but a lot of rabble-rousers get out and make speeches and advocate all sorts of things, but their rantings fall on deaf ears, and they are violating the law when they do that whether those who hear the remarks pay any attention to them or not.

Counsel for the Accused, Branton: Your Honor, please, may I ask one or two questions for my own clarification? Is the court suggesting that if Dion Diamond did in fact make a speech in which he urged students to boycott classes that if that is not rebutted that it is the court's opinion that he would be guilty of violating this disturbing the peace statute regardless of what consequences may have developed from that?

The Court: No, I am considering all of the evidence in the case, because as you know under the disturbing the peace statute the doing of certain things that are calculated [fol. 139] to alarm and disturb the public. Now what I am saying is whether the doings or the actions of the accused

did actually create a turmoil and disturbance is something else again, it is not necessary to prove that. It is just like if somebody is using obscene language or engaging in a fight in public, that is calculated to alarm and disturb the peace. Actually you might have some hardened souls standing around there who wouldn't be disturbed at all.

Counsel for the Accused, Branton: In that same line of reasoning, Your Honor, would not the State also be precluded from showing what happened out there after these speeches were made?

The Court: No, because an accused person who commits an act, a wrongful act, is presumed by law that the natural consequences will follow, and you can show the natural consequences. This accused, I don't know whether he had [fol. 140] that in mind or not, but when he made speeches advocating the boycotting of classes, he is presumed by law to know that very probably that very thing that he is advocating is going to follow, and it is a consequence of his actions, but I am not saying it is absolutely necessary to show the consequences, but it is admissible.

Counsel for the Accused, Branton: But if the State is permitted to bring out what did happen, and there is an inference that this was the natural consequence of what the defendant did, couldn't the defendant also show that other speeches were being made and that what did occur afterwards likely could have been connected with what they did and not with what he did. Are we not entitled to show that?

The Court: I don't think so because this is not a crime requiring any specific intent. Where a specific intent is required for the State to prove, the State can show inde- [fol. 141] pendent actions and independent crimes for the purpose of showing what intent he had in mind on that particular occasion, but not for showing the commission of the act itself. All right, go ahead.

Counsel for the Accused, Jones: Your Honor, I would like to reserve a formal exception.

Q. Dean, did any of the students stay out of class, sir?
A. They did.
Q. Did any of the students go to class?
A. They did.
Q. Were the classes completely interrupted?

A. I couldn't measure that, Mr. Jones.

Q. Beg your pardon?

A. I couldn't measure that. There were some interruptions of classes; how many I could not say.

Q. But was classes regularly held after that, sir?

A. Yes, they were. If you—may I add to that, Your Honor?

The Court: Yes, you can explain it.

A. If you mean by that were instructors at their posts at the time they were supposed to be there, and if you mean [fol. 142] by that were some students in classes, yes, they were.

Counsel for the Accused, Jones: That's all.

Assistant District Attorney, Wall: That's all. State rests.

Witness excused.

STATE RESTS

MOTION FOR A DIRECTED VERDICT AND OVERRULING THEREOF

Counsel for the Accused, Jones: Your Honor, in view of the testimony given the State has failed to prove a case, and no testimony to the effect that the speeches that the accused gave on the 30th and 31st in front of the Student Union Building, which is not in the vicinity of the classrooms, had any effect whatsoever as to disturb the peace or to cause an unruly mob or that it encouraged any of the students at Southern University to leave class, inasmuch as other speeches were given by other persons prior to and subsequent to the giving of the speeches by the ac- [fol. 143] cused. We are saying that the State has failed—

The Court: Let me ask counsel. Are you moving for a directed verdict?

Counsel for the Accused, Jones: Yes, sir, I am moving for a directed verdict.

The Court: All right, go ahead.

Counsel for the Accused, Jones: That's all.

The Court: The court overrules the motion for a directed verdict.

Counsel for the Accused, Jones: To which ruling I except and ask that a formal bill be reserved.

WILLIE HARRIS, called as a witness on behalf of the accused, having been first duly sworn, testified as follows:

Direct examination.

By Counsel for the Accused, Branton:

Q. Will you state your name please?
A. Willie Harris, Senior.
Q. Where do you live?
A. 1675 79th Avenue.
Q. Is that here in Baton Rouge?
A. North Baton Rouge, sir.
[fol. 144] Q. By whom are you employed?
A. Southern University.
Q. In what capacity are you employed at Southern University?
A. Campus security.
Q. And how long have you been employed in the campus security force at Southern University?
A. Fourteen years.
Q. Do you know the defendant, Dion Diamond, who is seated over to my left?
A. Yes.
Q. Did you have occasion to either assist in making an arrest of him or in arresting him on or about February 1st of this year?
A. Yes.
Q. Did you make the arrest yourself?
A. Yes.
Q. Are you a deputy sheriff?
A. Security officer.
Q. Have you ever been deputized by the sheriff of East Baton Rouge Parish?
A. Yes.
Q. Is your commission outstanding now? In other words is it in force now?
A. Yes.
Q. Was it in force at the time that you made the arrest?
A. Yes.
[fol. 145] Q. At the time that you made this arrest did you have any kind of an arrest warrant?

A. As campus security officer if he violated a rule or regulation I make the arrest, I am the chairman.

Q. The question was whether or not you had a warrant for his arrest?

A. No.

Q. Did someone suggest to you that this man should be arrested?

A. If it is a rule or regulation that he broke he is to be arrested on the campus.

Q. What rule or regulation did he break to cause—is this a decision you reached yourself?

A. Yes, disturbing the peace.

Assistant District Attorney, Wall: Judge, I am going to object to any further questions along these lines. I think it has been evident all through the trial, and the court has pointed out previously that what we are trying here now is based on a bill of information filed by the District Attorney's office, and if they have any objection about the nature of the arrest or whether he had a warrant or whether [fol. 146] there was a warrant outstanding at the time the arrest was made, I suggest that it be taken up at some other time because it has no bearing on the guilt or innocence of this accused, and I object to the questions along that line.

The Court: I would ask counsel what the purpose of this is, because, as the court has pointed out, we are not concerned here with the arrest or the nature of the arrest or whether or not in the estimation of the one who made the arrest whether or not he had sufficient grounds, probable cause, to make the arrest. That issue is not before the court.

Counsel for the Accused, Branton: If Your Honor please, the reason for it is that obviously the prosecuting attorney filed his information based upon evidence which was given to him by someone else, and we are trying to arrive at the reasons and causes for the making of an affidavit or the giving of information, and we are trying to elicit from this [fol. 147] witness what information he has that might have any bearing at all on the alleged crime.

The Court: Well I am going to let you do that, but, as I say, anything connected with the arrest is a matter of no consequence at all. If this witness knows any facts about the guilt or innocence I will permit you to go into that.

Counsel for the Accused, Branton: If Your Honor please, let me explain further that the witnesses were not to talk to anybody, but the rule did not apply to counsel for either side, and this witness, contrary to any other witness, refused to answer any questions, so we really don't know what he knows. He was subpoenaed by the State and we have to go a little bit beyond to even find out.

The Court: Well, he is not a State's witness until he is placed on the stand by the State.

Counsel for the Accused, Branton: But he refused to [fol. 148] answer any questions unless the State told him to out there, and we think that he may know something that is material to our defense, and this is the only way we can go about it.

The Court: Well you can ask him anything that he knows touching on the guilt or innocence, but as to whether he had the authority to make the arrest, probable cause, or anything like that, has nothing to do with this case.

Q. Now, what was the cause for your making the arrest? In other words why did you arrest the defendant?

A. Unlawful assembly.

Q. Sir?

A. For him holding an unlawful assembly.

Q. For holding an unlawful assembly?

A. Yes, sir.

Q. Did you ask him if he held an unlawful assembly?

Assistant District Attorney, Wall: Judge, I objected to this and I thought the court said that the circumstances [fol. 149] surrounding the arrest other than the fact of the arrest, has nothing—that the questions would be curtailed unless they are related to the guilt or innocence of this accused.

The Court: That is true, but I think he has gotten off of that. He is asking this man now whether he knows of his own knowledge whether this accused did conduct an unlawful assembly, which would be permissible.

Q. What type of assembly did you see this man hold? First let me ask you this, did you see Dion Diamond hold any kind of an assembly?

A. Yes.

Q. What kind of an assembly did you see him hold?

A. He was giving a lecture to a crowd, a large crowd, approximately five or six hundred.

Q. Did you ask him if he had a permit to hold the assembly?

A. I didn't get up to him close enough to find out, but I had found out already he didn't obtain a permit to hold such a meeting.

Q. You found out what?

A. I found out beforehand that he did not have a permit to hold such a meeting.

[fol. 150] Q. Did you see him do anything that was out of the way in talking to the students?

A. Out of the way, what you mean when you say out of the way?

Q. Well describe the meeting that you saw him hold, the assembly that you saw him hold?

A. The assembly that he held, I mean he was pleading for more strength of the student body. As such he claimed he didn't have enough followers and he wanted approximately fifty per cent, that's what he was crying for and pleading for.

Q. Now, was there anything that he said or did himself to cause you to arrest him?

A. What you mean, do or said, what you speaking of?

Q. What I am trying to find out, sir, whether or not this defendant did anything in your presence which caused you on your own to arrest him?

A. I told you in front he did not have permission to hold this assembly, that was it. I think I made that clear.

Q. Is it your place to find out if folks have permits to hold meetings out there?

A. That's it, campus security, that's it.

Q. In the fourteen years or more that you have been there have you ever had occasion either before or since to arrest anybody for holding a meeting without a permit?

Assistant District Attorney, Wall: I object, Judge. First [fol. 151] of all this is their witness and the leading questions—I don't mind if they lead him or whatever they want to do with him, but I do object to them getting away from the case at issue.

The Court: He has testified that that is his duty to enforce the rules, and whether or not he has enforced them in the past is beside the point.

Counsel for the Accused, Branton: If Your Honor please, the State introduced a man this morning who was this man's superior, and he testified about the arrest and all and this man testified that he didn't know the reason for the arrest but this man did. Now the State put on that.

The Court: I don't think he testified about the reason, I think he testified that he did not make the arrest, he didn't instruct this man to make the arrest, but this man actually made the arrest. He was cross-examined as to whether he jointly made the arrest, and he made it clear [fol. 152] that it wasn't any joint arrest, that he didn't authorize it, he didn't instruct this man, who was his inferior, to make the arrest, but that actually this man, Harris, did make the arrest.

Counsel for the Accused, Branton: If Your Honor please, are we not entitled to find out from this man why he made the arrest and anything relating to it? Not from the standpoint of challenging the failure to have an arrest warrant, but in going into what this man knows about the crime.

The Court: I have already told you, counsel, that you can ask this witness anything he knows about the commission of the crime. Now you are getting into the time of the arrest on the following day, which was February 1st. Now anything that occurred on the dates in the bill of information, the 30th of January or the 31st, that this man knows about of his own personal knowledge he can testify, you can ask him anything about it, anything that transpired on those two days.

[fol. 153] Q. Did anyone tell you to arrest this man?

A. No.

Q. When did you decide that this man was going to be arrested?

A. When the assembly was going on.

Q. Why didn't you arrest him at that time?

A. I couldn't reach him.

Q. What assembly was this that was going on? I mean when was this assembly that you decided to arrest him?

A. I arrested him on the 1st.

Q. I know, but you say you decided to arrest him when this assembly was going on. Now which assembly was this?

The Court: He wants to know about what time and place.

A. The assembly was in front of the Union Building.

Q. On what date?

A. 31st.

Q. On the 31st of January?

A. Yes, sir.

Q. Do you know about what time of day it was?

A. Approximately 12:30.

Q. And what kept you from getting to the defendant at that time?

A. The crowd.

Q. Did you see the defendant any more that day?

[fol. 154] A. Not after the assembly.

Q. When did you next see the defendant?

A. On the 1st.

Q. In the morning of the 1st?

A. Yes, sir.

Q. The morning of the 1st of February?

A. Yes, sir.

Q. That is when you arrested him?

A. Yes, sir.

Counsel for the Accused, Branton: Your witness.

Cross examination.

By Assistant District Attorney, Wall:

Q. Now, Willie, you have been a campus security officer for about how long?

A. About fourteen years approximately.

Q. And you said that you arrested this man on February 1st and you had observed him holding an assembly on January 31st of 1962, is that correct?

A. That's correct.

Q. And the assembly you are talking about on January 31st, isn't it true that is when he had this large crowd of students and was urging them to stay out of classes?

A. Urging them to stay out of classes.

[fol. 155] Q. And there were several hundred students out there, were there not?

A. Approximately.

Q. And who was leading that group? Isn't it true that Diamond was the one urging them not to go to classes, to stay out of classes?

A. Not to go to class. He was calling on fifty per cent of the students at least; he said, "That is what I need."

Q. And isn't it true that after that, Willie, that a large group of those students did go through several of those classroom buildings and disrupt the classes?

A. Pulling on doors, stomping on the halls and so forth and so on.

Q. And they created a big disturbance, didn't they, Willie?

A. A large disturbance.

Q. And it caused you all a lot of concern, didn't it?

A. Real big.

Q. And classes were going on in the buildings at the time that these students went through there, were they not?

A. Classes were going on, they were disturbing the classes, pulling on the doors of the classrooms, stomping on the hall.

Assistant District Attorney, Wall: That's all.

[fol. 156] Redirect examination.

By Counsel for the Accused, Branton:

Q. Did you see Dion Diamond going through any of the classroom buildings?

A. No.

Counsel for the Accused, Branton: I believe that's all.

Recross examination.

By Assistant District Attorney, Wall:

Q. But you saw Dion Diamond talking to the students urging them to go into the classrooms and bust them up, didn't you?

A. Told them, "Let's go through the classrooms."

Counsel for the Accused, Branton: I object, Your Honor, there has been no testimony that he saw that man doing any such thing.

Assistant District Attorney, Wall: Well I am asking him. He is your witness and I am cross-examining him. I am asking him if it isn't true he didn't see him out there urging them to go in and break up the classes.

The Court: I overrule the objection.

[fol. 157] Counsel for the Accused, Branton: Your Honor, I object to that.

The Court: He is on cross-examination. He can't testify but he can ask the witness.

Counsel for the Accused, Branton: Your Honor, he is asking the witness about a statement that the witness himself has not made.

The Court: We have no jury here and I can comment on the evidence. I believe he brought out on cross-examination that he, this witness, heard this accused urging the students assembled there not to go to classes, and then he testified that thereafter he, this witness, saw the students go into the classrooms, pulling on the doors, stomping in the halls and creating quite a disturbance.

Counsel for the Accused, Branton: If Your Honor please, the question he asked this witness was whether or not he also heard him say to these students that they should go in there and bust up these classes.

[fol. 158] Q. Well disrupt the classes, in other words boycott the classes, leave the classes. You heard Dion Diamond tell the students to do that, didn't you?

A. I heard him tell them to go from classroom to classroom.

Q. And that is what followed?

A. That followed afterwards.

Assistant District Attorney, Wall: That's all.

Redirect examination.

By Counsel for the Accused, Jones:

Q. Willie, you were subpoenaed to come down here today, were you not?

A. I don't understand your statement.

Q. Were you subpoenaed to come here today?

A. Yes.

Q. By whom?

A. The State.

Q. The State subpoenaed you to come?

A. Yes.

Q. Now, did you have an occasion to hear the speech that was given by Dion Diamond?

A. Parts.

Q. Beg pardon?

A. In parts.

[fol. 159] Q. What part did you hear, the first part or the last part?

A. I wouldn't say the first part nor the last part.

Q. Well what part did you hear?

A. I heard Diamond make some statements such as I need more followers, I don't have enough followers, I need fifty per cent of you students to follow me so I can carry on for approximately a week, and he went on to say we will go from classroom to classroom to pick up more strength, and then he made the remark, "We will be back on tomorrow police or no police," and as of such when he arrived the next morning that's when the arrest was made.

Q. When he arrived the next morning and you arrested him where was he at that time?

A. He was in front of the new classroom building.

Q. What was he doing at that particular time and just prior thereto?

A. Make yourself clear when you say prior thereto now.

Q. What was he doing at the time that you arrested him and just before you arrested him?

A. He was riding in a cab.

Q. Was he making a speech at that particular time?

A. No.

Q. Was he saying anything at that particular time?

A. No.

Q. Now, when you heard him make this particular speech where was he?

[fol. 160] A. In front of the Union Building.

Q. When was that?

A. January 31st.

Q. And what time of day?

A. Approximately 12:30.

Q. And how near or how far were you from him at that particular time approximately?

A. Approximately fifty feet I imagine.

Q. Fifty feet. Why didn't you arrest him at that particular time?

A. I couldn't get near him.

Q. You couldn't get near him at fifty feet?

A. That's what I said.

Q. Were you by yourself?

A. No.

Q. Who you had with you?

A. Pass.

Q. Who is Pass?

A. William Pass.

Q. Is he a security officer also?

A. Yes.

Q. On what side were you, to the speaker's left or to his right?

A. I was on the east side of the speaker.

Q. You were on both the left and right side of him, is that right?

[fol. 161] A. I said I was on the east side.

Q. Oh, I thought you said each side. You was on his east, E-A-S-T, east side of him. Now where was Pass?

A. Pass was near me.

Q. He was near you?

A. Yes.

Q. Now, if you—did you want to arrest him at that particular time that he was giving a speech?

A. You will have to make that clear, I don't understand that.

Q. Did you want to arrest him at that particular time? Did you have any desire to arrest him at the time he was giving his speech?

A. I don't understand that question.

Q. Did you wish to arrest him at the time—

A. I don't understand that wish.

Q. Beg your pardon?

A. I don't understand that question.

Assistant District Attorney, Wall: Judge, I submit it is immaterial whether he wished to arrest him or whether he didn't. It plainly calls for an opinion from this witness. He is not at all satisfied in his own mind just what he means by wish or why didn't he or did he determine at [fol. 162] that time. The fact remains that he was arrested the following day, and I think it is completely immaterial as to whether this man wanted to arrest him, whether he was directed to arrest him or how the arrest came about.

Counsel for the Accused, Jones: Your Honor, it is true that the fact is that he was arrested on February 1st; it is true that it is a fact that he was not arrested on January 31st, and it is a fact that he had an opportunity to arrest him on January 31st, he could have done it if he had wanted to. The fact is at the time that the accused was giving his speech the witness did not see any reason to arrest him. Now, some fabrication took place between the time that he gave his speech and the time the arrest was made. Now, what that fabrication was, that he was guilty of doing something other than making a speech on the campus of Southern University exercising freedom of speech when he could have been arrested.

[fol. 163] The Court: As I recall the testimony of the witness, he testified that he determined, or he made up his mind at the time that he heard the accused making the speech that the accused should be arrested, and that has

gone in the record already, that he made up his mind at that time to arrest him. Now he explained why he didn't arrest him at that time was because he couldn't get to him because of the crowd. Now, he also has testified that he heard the accused exhorting those students to carry on for approximately a week and he was trying to build up enough strength to get a majority, at least fifty per cent, and said I will be back tomorrow, and when he got back tomorrow in the cab this witness arrested him, but it is in the record from this witness that he made up his mind, he determined that the accused should be arrested at the time he heard him making the talk, and you asked him why didn't he make the [fol. 164] arrest then and he said he couldn't get to him.

Q. Now, did you or did you not refuse to discuss this case with any of the attorneys for the defense, Mr. Bell, Mr. Branton or myself?

A. I did not.

Q. You did not refuse to?

A. I did not.

Q. Beg your pardon?

A. I did not.

Q. You did not. Are you testifying that you discussed the case with the attorneys for the defense?

A. I answered that question first.

Q. Outside in the hall here, did you discuss the case with them?

A. I said I answered the question at first.

Q. What was your answer?

A. I did not.

Q. You did not what?

A. The question you asked me.

Q. Well let me ask it in another way. Did you discuss the case with Mr. Branton in the hall?

A. I answered that question.

The Court: You can answer it again, Harris.

[fol. 165] Q. Did you discuss the case with Mr. Branton in the hall?

A. I don't remember it.

Q. Did you refuse to answer questions that was asked you by Mr. Branton?

A. I did not.

Assistant District Attorney, Wall: I object. The man is a witness ordered down here by the court in response to a request by the State that he be subpoenaed, true. The court, in sequestering the witnesses, doesn't order the witnesses to testify in the hall or to make any statements to any of the opposing counsel or the State's attorneys. If he refused to talk to the State's attorneys out there in the hall or refused to talk to defense counsel, I don't see how it affects the guilt or innocence of this accused. If a man elects to come in here and testify under oath one time and be done with it I don't see what criticism can be directed at him by defense attorney. He is subject to examination now, he is under oath to tell the truth.

[fol. 166] The Court: That is true. Of course on the question of showing interest or lack of interest they could bring out whether or not he discussed the case with them or didn't discuss the case with them just for the purpose of showing interest or lack of interest in the case, bias or prejudice. From a legal standpoint a witness doesn't have to discuss the case outside the courtroom with anybody, the District Attorney or defense counsel. He can just say I will tell what I know when I am in the court under oath, and that is all the law requires of him, but in order to show interest or lack of interest or bias or prejudice it is permissible to cross-examine him whether or not he discussed the case, whether or not he refused to discuss the case, but I will tell the witness this, that all witnesses in this case have been instructed by the court, as you recall, not to discuss this case with anybody, not for anybody [fol. 167] to discuss the case in their presence, and particularly not to discuss the case with any witness who has testified and subsequently left the courtroom, the exception to the rule being that counsel in the case may confer with their witnesses. Now it may be that this man, realizing that he was subpoenaed by the State, thought it was improper to discuss the case with defense counsel, but you can ask him whether he discussed it or whether he refused to discuss it, and you should answer that, Harris, one way or the other, just the way it happens to be. If they tried to discuss the case with you and you refused to do it, if that is what actually happened, if that is the truth,—

A. I told the man I didn't understand whether I should or not, I wasn't familiar with it?

By the Court:

Q. You were uncertain.
A. That's what I told him.

[fol. 168] By Counsel for the Accused, Jones:

Q. Then you refused to discuss the case with the—
A. I didn't talk to him so far as the case was concerned.
Q. Now at first why did you deny that you didn't discuss the case with Mr. Branton, the defense attorney?
A. I didn't deny it.
Q. Now, do you want this court to believe that the two of you, you and Pass, two security officers, could not arrest this accused on the day that he gave his speech, that you couldn't get to him? Do you want this court to believe that, or do you believe that yourself?

Assistant District Attorney, Wall: Judge, I am going to object to the leading question.

Counsel for the Accused, Jones: Your Honor, this is a hostile witness.

Assistant District Attorney, Wall: I don't know anything about him being hostile, there is no complaint about him being a hostile witness. He is a defense witness at this time and I object to the leading questions.

The Court: I don't think that at this stage the witness can be considered a hostile witness. He has explained why [fol. 169] he didn't discuss, that he was uncertain about it, the propriety of discussing the case.

By the Court:

Q. Have you been to court many times before?
A. I have been to court here once, sir.
Q. Have you been to court when the court ordered a sequestration of witnesses, ordered all witnesses out in the hall and not to discuss the case?
A. This is the first time.
Q. The first time you have had that experience?

A. Yes.

The Court: I don't deem him a hostile witness at this stage, so you cannot ask him leading questions. He is an intelligent witness, it is not necessary in the opinion of the court to ask him leading questions.

Counsel for the Accused, Jones: Your Honor, the question is whether or not he wants this court to believe that he could not have made that arrest on January 31st, 1962.

Assistant District Attorney, Wall: My objection is it is [fol. 170] a leading question and argumentative.

The Court: It is leading and argumentative too, but you could ask him did he have an opportunity after he determined that the accused should be arrested, did he have an opportunity that day to arrest him, was it necessary for him to wait until the next day to make the arrest.

Counsel for the Accused, Jones: Your Honor, I am assuming that he had the opportunity at the time he was giving the speech to make the arrest if he had wanted to. There were two of them there.

The Court: But he is the one who is testifying to what took place, the facts, and not counsel in the case. He has testified that he decided or determined that the man should be arrested, and then later on he explained that he didn't make the arrest at that time because he couldn't get to the accused. Now you can ask him why it is he couldn't get to the accused. I think he said because of the crowd, and then [fol. 171] he said after the convocation broke up he didn't see the accused anymore. He is your witness, but you can ask him if he had any other opportunity on that day, not whether Pass had an opportunity to do so, but whether he had an opportunity, he, this witness, had an opportunity to arrest him.

Q. Now how many times did you see the accused on the campus?

A. That day or when?

Q. Let's say January 30th and 31st of 1962.

A. I saw him twice on the 31st and once on the 1st.

Q. At what time did you see him on the 31st?

A. Approximately 12:30.

Q. That is the first time you saw him?

A. Second time.
Q. What time did you see him first?
A. Approximately 9:30.
Q. And what was he doing when you saw him at 9:30?
A. Holding the same type of assembly.
Q. Did you see him any time between 9:30 and 12:30?
A. I saw him approximately 9:30. After the assembly he disappeared in the crowd and I didn't see him anymore until he got back up on his stand at approximately 12:30.
[fol. 172] Q. Did you have occasion to see him that night on the 31st?
A. I was off duty that night.

Counsel for the Accused, Jones: That's all.
Assistant District Attorney, Wall: That's all.
Witness excused.

Murphy Jackson, called as a witness on behalf of the accused, having been first duly sworn, testified as follows:

Direct examination.

By Counsel for the Accused, Branton:

Q. Will you state your name please?
A. Murphy Jackson.
Q. Where do you live? Where is your home?
A. I am originally from Lake Charles. I live in Houston, Texas.
Q. Are you enrolled in school at Southern University at this time?
A. That is correct.
Q. How long have you been a student at Southern?
A. Since September 1958.
Q. Do you hold any elective office in the student government at Southern University?
[fol. 173] A. I am president of the Student Government Association, or president of the student body.
Q. And how long have you held this position?
A. Since April 18, 1961.

Q. Then you were president of the student body on or about January 30th and 31st of this year?

A. That is correct.

Q. Do you know the defendant, Dion Diamond?

A. I do.

Q. Along about January 31st, 1962 did you preside at a meeting on Southern University campus of the entire student body?

A. That is correct.

Q. Was this during a period when students were still registering for the spring semester of school?

A. That is correct.

Q. At that time did the defendant, Dion Diamond, attend that meeting?

A. He did.

Q. Did he seek permission from you to speak to the group?

A. Yes.

Q. Had you received any instructions from the faculty or anybody else with reference to any limitation imposed upon your meeting as to who could attend or participate?

A. Yes, there were limitations but not from the faculty.

Q. What limitations, if any, were imposed?

[fol. 174] A. This was a specification by the dean of students' office that only those people who were students might attend this meeting.

Q. Did you have occasion at that time to inquire of Dion Diamond as to whether or not he was seeking to enroll in Southern University?

A. I did.

Q. State whether or not Dion Diamond made any such representation to you as to whether he was or was not seeking to enroll in Southern?

A. He did, he showed me an application for admission to Southern University.

Q. Had this application been filled out?

A. It had.

Q. With his name on it and all?

A. That is correct.

Q. He showed this to you?

A. Yes.

Q. Now, at that meeting did you later refuse to permit Dion Diamond to address the students?

A. I did.

Q. And did he accede to that request or suggestion from you?

A. Yes. After my refusing to let him speak he left.

Q. Did he cause you any trouble or anything after the meeting?

A. No, he did not.

[fol. 175] Q. Was he boisterous or loud?

A. No, he was not.

Q. Did he do anything to disturb the assembly over which you were presiding?

A. No, he did not, but if I may make a point here, there were some students in the assembly who preferred to, but he asked them himself to not disrupt the meeting and leave out if they so desired, but he did not do anything.

Q. Are you telling us that Dion Diamond did this?

A. There were some students in the audience who wanted to have an outcry I might say, and Diamond asked the students to not have this outcry and that they just leave the meeting if they so desired or if they wanted to stay to be quiet.

Q. In other words you are telling the court then that Diamond—

Assistant District Attorney, Wall: Your Honor, I object to the leading question.

The Court: That is leading.

By Counsel for the Accused, Jones:

Q. Did you at any time, Murphy, hear Dion ask the students to be unruly and to encourage them to leave the class and go in and drag them out of the classrooms or anything [fol. 176] of that nature?

A. No, I did not hear this at any time.

Counsel for the Accused, Jones: That's all.

Cross examination.

By Assistant District Attorney, Wall:

Q. You were president of the student body or student senate at this time?

A. That is correct.

Q. At the time we are talking about?

A. Yes.

Q. And one of your duties and responsibilities as the leader of the student body was, insofar as possible, to keep peace and order up there, is that correct?

A. Not necessarily to keep peace and order, but at this particular meeting—

Q. I am not talking about at this particular meeting, I am talking about as a general policy. You were their leader?

A. Right.

Q. And you still are?

A. Yes.

Q. And your purpose up there is to gain an education as I understand it?

A. That is correct.

[fol. 177] Q. On the dates of January 30th and January 31st, 1962 did you associate yourself with Dion Diamond in his appeal to the students up there to boycott the classes?

A. What do you mean?

Q. Did you take part in it?

A. In his appeal to—

Q. That is correct.

A. No, I did not.

Q. Were you in sympathy with his appeal to the students to leave the classes?

A. In sympathy, yes.

Q. To leave the classes?

A. I was in sympathy with the idea for which he was speaking to the students for.

Q. That is correct, but you felt that it should be gained in a more orderly manner, did you not?

A. You might say that that was one of my feelings.

Q. In other words you didn't go, as student senate body leader or student leader you didn't go before the group of students at any time and say look, let's all leave classes, did you?

A. No, I did not have an occasion to.

Q. Well as a matter of fact the meeting that Dean Harvey gave you authority to hold that night, wasn't that in response to his exhortations to those students to leave, in rebuttal to his exhortations to those students to leave?

[fol. 178] A. Well I do not know what specific reference he had when he gave me the specifications.

Assistant District Attorney, Wall: That's all.

Witness excused.

JEANETTE GILLIAM, called as a witness on behalf of the accused, having been first duly sworn, testified as follows:

Direct examination.

By Counsel for the Accused, Branton:

Q. Will you state your name please?

A. Jeanette Gilliam.

Q. And where do you live, Miss Gilliam?

A. 2752 Michelli Drive.

Q. Is that here in Baton Rouge?

A. Yes.

Q. Are you a student at Southern University at this time?

A. No, I am not.

Q. Were you formerly a student the first semester at Southern University?

A. Yes.

Q. Do you know the defendant, Dion Diamond?

[fol. 179] A. Yes, I do.

Q. I would like to refer you back to the last week of January of 1962 at the time when students were holding meetings on the campus at Southern, and ask whether or not you were on the campus during any of the days of the last week of January 1962?

A. Yes, I was.

Q. Were you present at any occasion when Dion Diamond was addressing any of the students at Southern?

A. Yes, I was.

Q. Do you recall when and where these meetings took place?

A. Well the first meeting took place in the square right outside of the Student Union Building.

Q. When was this?

A. That was January 30th.

Q. Do you recall about what time?

A. 12 noon.

Q. And were you present at any other occasion when Dion Diamond addressed the students?

A. Yes, January 31st, in front of the new gym.

Q. Do you know about what time this was?

A. Approximately—I couldn't possibly say exactly what time it was, but it was approximately 8 o'clock, I am not sure.

Q. In the evening?

A. Yes.

[fol. 180] Q. Now, did you hear Dion Diamond speak to the students at any other time?

A. No, I didn't.

Q. Did you hear all of his speech on both of these occasions that you have referred to?

A. Yes, I did.

Q. State whether or not at any time if Dion Diamond asked students to go in and call anybody out of classrooms?

A. No, he didn't.

Q. Did he say or do anything to encourage students to disrupt classes that were in session?

A. No, he didn't.

Q. Did he make any statements urging anybody—

Assistant District Attorney, Wall: I object, Judge, I object to leading questions.

The Court: All of those questions are leading.

Counsel for the Accused, Branton: But if Your Honor please, this is the charge that he did encourage the students to leave and boycott the classes.

The Court: Certainly, but you have to try the case in [fol. 181] accordance with the rules of evidence. One of the rules is that you cannot lead your own witness.

Counsel for the Accused, Branton: But if Your Honor please, I am asking if he said or did anything for which he is specifically charged here.

The Court: You can ask her what he did, but you can't put words in her mouth and lead the witness.

Q. Will you relate to the court the substance of the messages which Dion Diamond gave?

A. Well, during the January 30th speech he made out in the square in front of the Student Union Building he did not advocate kids, students, going into classrooms taking kids out of class, but he did ask them to stay out of class.

Q. He asked them to stay out of class?

A. But he didn't advocate them going in and taking students out of their classes.

Q. Did he say anything about this in particular?

A. About taking them out of class?

Q. Yes.

A. No, he did not.

Q. Were there any remarks made by Dion Diamond as [fol. 182] to the conduct of the students, that is their general deportment and conduct?

A. No.

Counsel for the Accused, Branton: You may take the witness.

Assistant District Attorney, Wall: I have no questions.

Witness excused.

WILLIE BRADFORD, called as a witness on behalf of the accused, having been first duly sworn, testified as follows:

Direct examination.

By Counsel for the Accused, Bell:

Q. State your name and address please?
A. Willie Bradford, 601 Julia Street.
Q. Do you know the accused in this case?
A. I do.
Q. Right here, Dion Diamond?
A. Yes, I do.
Q. Willie, were you enrolled in school at Southern during the fall term?
A. Yes, I was.
Q. Did you have the occasion to be in that vicinity on or [fol. 183] about January 30th, 31st of 1962?
A. I was there on the 30th of January.
Q. Did you see the accused, Diamond, during that period?
A. Yes, I did.
Q. On what—at what time?
A. At approximately 8 o'clock at night, 8:00 P. M.
Q. Would you relate to the court exactly in substance what the accused, Diamond, was talking about, if any, or if he was talking about anything at that time?
A. That night Dion Diamond reprimanded students for their participation the day before in the march through the new classroom building at Southern University. He told them that they were wrong for trying to pull students out of the building during class hours because it was inconsistent with our ways of doing things.
Q. When you say our way, what do you mean by that?
A. It is not our policy to try to disrupt things.
Q. You used the word "our," I am trying to find out just what you mean by that.
A. Yes, as a member of the organization C-O-R-E, Core.
Q. Do you know whether Dion Diamond is a member of that organization?
A. I do not know if he is a member of Core.
Q. Did he state to you that he is a member?

A. No, he didn't.

Q. You don't know if he is a member or not then?

[fol. 184] A. No, I don't.

Q. But you did hear him say the statement which you just remarked?

A. Yes, I did.

Q. To refrain from any type of violence?

A. Yes.

Q. Was there any other time that you saw the accused on Southern University campus?

A. No, I didn't see him any time prior to that night or after.

Counsel for the Accused, Bell: Tender the witness.

Assistant District Attorney, Wall: No questions.

Witness excused.

THOMAS PEETE, called as a witness on behalf of the accused, having been first duly sworn, testified as follows:

Direct examination.

By Counsel for the Accused, Bell:

Q. Will you state your name and address please?

A. Thomas Peete, Box 4926, Baton Rouge, Louisiana.

Q. Mr. Peete, were you formerly a student at Southern?

[fol. 185] A. Yes.

Q. When was the first time you were regularly enrolled there?

A. January 18th is the last day I was allowed on the campus.

Q. Do you know the accused in this case?

A. Yes, I do.

Q. You know him?

A. Yes, I know him.

Q. Dion Diamond?

A. Dion Diamond.

Q. Did you have occasion to see him on or about January 30th or 31st of 1962?

A. I saw him I believe January 31st in the evening.

Q. About what time was that?

A. It was approximately 8 o'clock in the evening.

Q. Where on the campus did you see him?

A. In two locations, in the old gymnasium on the west side of the campus and on the ramp of the new gymnasium on the east side of the campus.

Q. And at the old gymnasium did you have occasion to hear him speak or did you speak to him yourself there?

A. I spoke to him, yes, but if my memory serves me correctly he attempted to address the student body but was not permitted to.

Q. Did he leave quietly?

A. Yes, yes, he did as a matter of fact.

Q. Did he make a speech at the old gymnasium?

[fol. 186] A. No, no, he did not, not to my knowledge.

Q. What happened after that, if anything?

A. Approximately four of us left the old gymnasium and we were followed by I would estimate between half and three-fourths of the student body present to the new gymnasium, the ramp of the new gymnasium.

Q. Did you go inside the new gymnasium?

A. No, we stood up on the ramp and the students gathered below us on the ramp.

Q. Was this meeting held in response to any type of preannouncement or circulars given out, or was it just an impromptu meeting?

A. This was an impromptu meeting.

Q. What happened, if anything, at this meeting? Did anybody speak at this meeting?

A. Yes, I spoke, Dearmy Bailey spoke, Murphy Jackson also spoke; several students, including Dion Diamond, spoke that evening.

Q. Will you relate to the court the substance or the tenor of what Dion Diamond said?

A. Well, Mr. Diamond was basically I would say reprimanding, or I would say he was reprimanding the official student leaders of the university for their lack of support for the students who had been ousted or refused admittance by the administration.

Q. At this meeting did he urge any one of the students or [fol. 187] any of the students to parade through the classrooms?

A. No, as a matter of fact he specifically denounced their actions and he urged that they not do this again because it was not in accord with the philosophy of our movement or philosophy of our actions.

Q. At any time during your association with Dion Diamond did you hear him advocate any type of—

Assistant District Attorney, Wall: I object.

Counsel for the Accused, Bell: I will withdraw the question.

Q. When was the next occasion that you had that you saw Dion Diamond?

A. I saw Dion Diamond that evening after the meeting and the next morning when he was arrested. I was with him at the time he was arrested.

Q. Will you relate to the court the circumstances leading up to the arrest? You were present?

A. Yes, I was present. Well, as I said before, Murphy Jackson, the president of the student body at that time, addressed the group that was present at the new gymnasium also, and after his statement and Dion's statement, after the students dispersed, we were discussing the situation and Murphy told us that—

[fol. 188] Assistant District Attorney, Wall: I object to anything Murphy told them.

The Court: I sustain the objection.

A. Well it was agreed that there would be a committee formed to sit down and discuss the situation and try to work out a solution, and we were invited up the next morning to sit in on this committee, Dion Diamond—

Q. Who invited you?

A. The president of the student body, Murphy Jackson.

Q. What happened then?

A. Well, we went up the next morning, Dearmy Bailey and Dion and I and several other students who had been invited were up on the campus already, and when we alighted from the cab—

Q. Just a minute now. Where did you—from what point were you coming?

A. We were coming up from the Lincoln Hotel.

Q. And you caught a cab?

A. Yes, we caught a cab and we alighted from the cab in front of the Student Union Building.

Q. What happened then, if anything?

A. We were confronted by Mr. Craft and Mr. Harris and Pass was in a car across the street from us. We were on [fol. 189] the right side of the road, and Mr. Craft told us we couldn't come on the campus. Well Dion started for the registrar's office and he was in the process of registering, he said that he had some lights that he wanted to check up on, some of the processes weren't quite clear to him, and we told Mr. Craft that we had been invited up and we had been authorized to come up for a meeting, and if I remember him correctly he said that we knew how it was, that it would be better if we got off the campus. Well we turned around and this time Mr. Pass and Mr. Harris, campus security officers, had Dion Diamond in their custody and he seemed to be—he made a vain attempt to explain his position and he just threw up his hands hopelessly and they dragged him to the car, placed him in the car and drove off with him, and then we told Mr. Craft that since we were also supposedly barred from the campus, although we did have permission, we wanted to be arrested too, but he would not do so.

Q. You asked to be arrested because your associate and companion had been arrested seemingly without cause and you asked to be arrested also?

A. That is right.

By Counsel for the Accused, Jones:

Q. Now, Peete, you say that Dion Diamond, the accused here, gave some speeches, is that right?

A. To my knowledge he made one speech.

[fol. 190] Q. You also made mention that several other persons gave speeches, is that right?

A. That's right.

Q. Now who were they?

A. Dearmy Bailey was one, I was another, Murphy Jackson, and if I am not mistaken George Essex and another student, I am not certain.

Q. What was the nature of your speech?
A. Of mine?

Assistant District Attorney, Wall: Judge, I object to the nature of his speech.

The Court: I don't think that would have any bearing on this, the guilt or innocence of the accused.

Counsel for the Accused, Jones: Your Honor, the accused is charged with encouraging others to demonstrate and to enter into unruly conduct on the campus and to have students leave class, to boycott the classes, at Southern University. I am still contending that we cannot show as to what speeches or to whose speeches that the students was [fol. 191] responding to, and I think that is material, Your Honor, as to the nature of his speech and the nature of the speeches that was given by others.

The Court: Well, the court takes the position whether the students responded to the defendant's speeches is beside the question. His conduct, what he did, what he urged to be done. Now what this witness, what type of speech he made, has no bearing on this case at all. He can testify what he heard Diamond say, but what this witness said in the nature of a speech has no bearing on the accused.

Q. Did you at any time hear Diamond ask the students or ask anybody to drag those students out of the classes that would not leave?
A. No, I didn't. As I stated before, I heard Diamond reprimand those students who had, reportedly had acted in this manner and urged them not to do so again.

Counsel for the Accused, Jones: That's all.

[fol. 192] Cross examination.

By Assistant District Attorney, Wall:

Q. Thomas, you are a freedom rider, is that what that little badge is?
A. This is a Core button.
Q. And you have been a member of Core for how long?
A. Approximately since November of 1961.
Q. Are you in school at the present time?
A. No, I am not.

Q. What are your means of livelihood?

A. I am employed by Cinema Distributors in Mobile, Alabama.

Q. And the only time you heard this man talk with reference to the charge was on the night of January 31st, 1962 at about 8 o'clock?

A. Yes, that is correct.

Q. And was that subsequent to the time that he attempted to speak at this regularly constituted meeting of the student assembly?

A. I believe the meeting at 8 o'clock on January 31st was the evening of the regularly scheduled assembly.

Q. And they had a meeting at the old gym?

A. That's right.

Q. And that was the one that was conducted under the auspices of the Dean of Students?

A. Yes, I believe so.

[fol. 193] Q. And that was the meeting that Diamond appeared and wanted to speak, is that correct?

A. Yes, that's right.

Q. And Murphy Jackson refused to allow him to speak?

A. That's right.

Q. And he left and half of the students who were at the meeting followed him?

A. That's correct.

Q. And you said he was also reprimanding the students for not going along with him with more enthusiasm?

A. He did this at the assembly in front of the new gymnasium. May I ask that that statement be disregarded? He did this, he reprimanded the official student leaders of the university, that is Murphy Jackson and the student senate, for not taking a more substantial stand in support of our students.

Q. Now, you were—this Jeanette Gilliam, do you know her?

A. Yes, I do.

Q. Is she one of your members?

A. Yes, she is a member of Core.

Q. Were you present at the same meeting that Jeannette attended when she heard Dion ask the students to stay out of the classes?

A. If you are referring to the meeting that afternoon, no, I was not present, at 12 o'clock.

[fol. 194] Assistant District Attorney, Wall: That's all.

Witness excused.

DEFENSE RESTS

MOTION FOR A DIRECTED VERDICT AND OVERRULING THEREOF

Counsel for the Accused, Jones: We rest, Your Honor, and we move for a directed verdict, Your Honor.

Assistant District Attorney, Wall: I submit it, Judge.

The Court: I overrule the motion for a directed verdict.

Counsel for the Accused, Jones: To which ruling we except and ask that a formal bill be reserved.

Defense closes.

State closes.

Testimony closed.

[fol. 195]

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

Number 46454

STATE OF LOUISIANA, Appellee,

vs.

DION TYRONE DIAMOND, Defendant-Appellant.

APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION, INVOKING SUPERVISORY JURISDICTION OVER THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA—Sworn to November 21, 1962

Honorable Fred S. LeBlanc, Judge, Presiding

To the Honorable, Chief and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of the State of Louisiana on the relation of Dion Tyrone Diamond (hereinafter referred to as "Relator") applying for Writs of Certiorari, Mandamus and Prohibition, with respect represents:

—1—

That, by the Honorable District Attorney of the Nineteenth Judicial District Court of the State of Louisiana, Parish of East Baton Rouge, relator, a Negro college student, is charged with the crime of "Disturbing the Peace," under the provisions of LSA-R.S. 14:103(7) of 1950, as amended, in that, allegedly, on the 30th day and the 31st day of January, 1962, relator did enter upon the premises of Southern University and there engage in and encourage students of Southern University to hold unruly, unauthorized demonstrations on the campus and did lead and encourage said students to march through the University buildings while classes were being conducted and did encourage said students to boycott and leave the classes in such manner as would foreseeably disturb and alarm the public, contrary to the form of the Statutes of the State of Louisiana, in such case made and provided, in contempt of the authority of said State, and against the peace and dignity of the same.

[fol. 196] —2—

That the "Bill of Information" under which relator is charged is insufficient to allege or charge a crime under LSA-R.S. 14:103(7) of 1950, as amended, in that said Bill of Information fails to particularize and specify a crime set forth and specifically enumerated in said Statute; that LSA-R.S. 14:103(7) of 1950, as amended, does not specify, enumerate nor embrace the crime of which your relator is charged.

—3—

That, thus, the relief which relator seeks herein, under the Application for Writs of Certiorari, Mandamus and Prohibition, should be granted by this Honorable Court, in that the Statute and Bill of Information under which

relator is charged, both, are insufficient to charge a crime, otherwise your relator be deprived of due process of law and equal protections of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

—4—

That the Honorable Nineteenth Judicial District Court was in error in denying your relator the Application for Bill of Particulars and refusing the Motion to Quash; that there is no adequate remedy by law, other than by this Honorable Court granting a remedy by review of these proceedings and a review of the rulings of which your relator complains, there being no appeal by right of law after a trial on the merits of this cause is had; that duly certified copies of said pleadings are hereto appended, filed herewith and made a part hereof the same as if herein written "in extenso."

—5—

That the Honorable Court aquo erred in overruling relator's Motion for New Trial; that the evidence adduced on the trial of this cause clearly establishes that relator, on January 30 and 31, 1962, merely made speeches in protest of racial segregation to a small group of college students assembled in front of the Student Union Building on the campus of Southern University whereby he encouraged the students to stay out of class in support of the freedom movement protesting racial segregation in the Baton Rouge community, the activity being not proscribed by a general Disturbing of the Peace Statute, except depriving relator [fol. 197] of his constitutional protections guaranteed by the First and Fourteenth Amendments to the Constitution of the United States of America.

—6—

That the Verdict and Sentence of the Honorable Court aquo are in error in that same are contrary to the law and evidence and repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921,

as amended, and of the First and Fourteenth Amendments to the Constitution of the United States of America, depriving relator of his freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws as constitutionally guaranteed all citizens of the State of Louisiana and of the United States, race notwithstanding.

—7—

That the verdict of the Court aquo in the cause hereof is in error in that it is contrary to the law and evidence, relator not engaging in any overt acts of violence or intimidation or acts of foreseeability of disturbing the peace or the public, nor engaging in any activity that had been denounced as a crime by LSA-R.S. 14:103(7) of 1950, as amended, the Statute under which relator is charged.

—8—

That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that relator, as did others, between December 15, 1961 and February 1, 1962, made many speeches or public addresses on the campus of Southern University and to its student body urging and encouraging the students of Southern University to stay out of classes in protest of racial segregation and in support of the freedom movement in which students of the various Negro colleges and universities throughout the nation and particularly in the Southern States were participating; and that, to sustain a verdict of guilty in such case made and provided violates relator's freedom of speech accorded by the First Amendment to the Constitution of the United States of America and, furthermore, denies him due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, the evidence being such that it is impracticable to specifically determine the responsibility for the partici- [fol. 198] pants in the freedom movement demonstration, the movement being nationwide in scope; that relator not being charged with conspiracy cannot be held accountable

for malicious acts of others, if any such acts were committed.

—9—

That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that relator, at the time of his arrest was alighting from a taxi cab and was not engaged in any manner whatsoever in any racial controversy and was not ostensibly protesting racial segregation; that relator was arrested on February 1, 1962, by a Security Officer of Southern University, who was whimsically constrained to arrest relator for freedom speeches he had made on the campus of Southern University on each of the next two preceding days, January 30 and 31, 1962. Notwithstanding, the evidence clearly establishes that Southern University is a public institution and that the relator, as well as others, has and had free accessibility to the campus, i.e., to frequent the campus and therewith visit friends, relatives and associates; that, therefore, relator alleges and avers that to deny him the right to frequent the campus of Southern University, a public institution of higher learning, is a denial of the right of freedom of association accorded by the First Amendment to the Constitution of the United States of America, and to subject him to the criminal processes in such case made and provided is a denial of due process and equal protection of the laws guaranteed to him, a citizen of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

—10—

That while the arrest and charge were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which relator engaged to protest racial segregation and that the use of the criminal processes in such a situation denies and deprives the relator of his rights, privileges, immunities and liberties guaranteed to him, a citizen of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

[fol. 199] —11—

That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that relator did not conduct himself in any way which disturbed or tended to disturb the peace. However, relator, on January 30 and 31, 1962, did make speeches in front of the Student Union Building on the campus of Southern University encouraging the students of Southern University, a segregated institution for Negro college students, to protest (as a unified student body) racial segregation in the Baton Rouge community; that such activities, in which relator engaged, do not constitute a violation of a Disturbing the Peace Statute, except depriving relator of freedom of speech, due process of law and equal protection of the laws guaranteed relator, a citizen of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

—12—

Relator shows that a true original duplicate copy of his "Motion for New Trial" is hereto appended, filed herewith and made a part hereof the same as if herein written "in extenso;" that relator alleges and avers that there is no adequate remedy at law, other than by this Honorable Court granting a remedy by review of these proceedings and a review of the rulings of the Court aquo of which your relator complains, there being no appeal by right of law after the trial on the merits have been had.

—13—

That relator has given notice to the State of Louisiana through the District Attorney and District Judge of the Parish of East Baton Rouge of relator's intention to apply to this Honorable Court for Writs of Certiorari, Mandamus and Prohibition, all in accordance with the laws applicable thereto and the rules of this Honorable Court.

That relator appends hereto, files herewith and makes a part hereof the same as if herein written "in extenso," duly certified copies of the following, to-wit:
[fol. 200]

1) A legible copy of the "Bill of Information," charging relator with the crime of disturbing the peace, under the provisions of LSA-R.S. 14:103 of 1950, as amended.

2) A legible copy of relator's "Motion to Quash," which was filed with the Court aquo on March 23, 1962, which was argued, submitted and by said Court overruled on Monday, April 9, 1962, together with duly certified copies of the "Bills of Information" in cases numbers 42,612, 42,615, 42,616 and 42,917, which were made a part of the record hereof, per Minutes of the District Court of Monday, April 9, 1962, all as shown, respectively, by the Minutes of the District Court of Friday, March 23, 1962 and Monday, April 9, 1962, which Minutes are appended hereto and made a part hereof the same as if herein written "in extenso."

3) A legible copy of relator's "Application for Bill of Particulars," which was filed with the Court aquo on March 23, 1962, which was argued, submitted and by the Court aquo overruled on Monday, April 9, 1962, all as shown, respectively, by the Minutes of the District Court of Friday, March 23, 1962 and Monday, April 9, 1962, which Minutes are appended hereto and made a part hereof the same as if herein written "in extenso."

4) A legible copy of relator's "Motion for New Trial," which was filed with the Court aquo on May 23, 1962, which was argued, submitted and by the Court aquo overruled on May 24, 1962, all in accordance, respectively, with the Minutes of said Court of May 23, 1962 and May 24, 1962, which Minutes are appended hereto and made a part hereof the same as if herein written "in extenso."

5) A legible copy of relator's "Bills of Exceptions" numbers 1-10, which was submitted to the Presiding Judge on June 4, 1962 and by said Judge signed on November 8, 1962, together with the "Per Curiam" of the District Judge to "Bills of Exceptions" numbers 1-10.

6) A legible copy of the "Minutes" of the District Court of Thursday, March 8, 1962.

7) A legible copy of the "Minutes" of the District Court of Monday, March 12, 1962.

8) A legible copy of the "Minutes" of the District Court of Friday, March 23, 1962.

9) A legible copy of the "Minutes" of the District Court of Wednesday, March 28, 1962.

10) A legible copy of the "Minutes" of the District Court of Monday, April 9, 1962.

11) A legible copy of the "Minutes" of the District Court of Tuesday, May 8, 1962.

12) A legible copy of the "Minutes" of the District Court of Wednesday, May 23, 1962.

[fol. 201]

13) A legible copy of the "Minutes" of the District Court of Thursday, May 24, 1962.

14) A legible copy of the "Minutes" of the District Court of Friday, June 15, 1962.

15) A legible copy of an "Extract of the Minutes" of the District Court of Friday, June 29, 1962.

16) A legible copy of an "Extract of the Minutes" of the District Court of Wednesday, October 17, 1962.

17) A legible copy of an "Extract of the Minutes" of the District Court of Tuesday, October 23, 1962.

18) A legible copy of an "Extract of the Minutes" of the District Court of Wednesday, November 14, 1962.

19) A legible copy of the "Transcript of the Testimony" taken on the trial of the cause hereof, which was heard on May 8, 1962.

20) Relator files herewith his "Memorandum of Authority" in support of this, his Application for Writs of Certiorari, Mandamus and Prohibition.

Wherefore, your relator respectfully prays that Writs of Certiorari, Mandamus and Prohibition be issued out of and under the seal of this Honorable Court, directed to the Honorable Judge Fred S. LeBlanc of the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana, commanding said Judge of said Court to certify and send to this Honorable Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its Docket, Number 42,917, State of Louisiana versus Dion Tyrone Diamond, and that the said decrees or judgments of the Nineteenth Judicial District Court of Louisiana may be reversed, set aside and declared null and void by this Honorable Court, and that your relator may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your relator will ever pray.

Attorney for Defendant: Johnnie A. Jones

Of Counsel:

Jack Greenberg, 10 Columbus Circle, New York 19, New York.

Wiley A. Branton, 119 E. Barraque Street, Pine Bluff, Arkansas.

[fol. 202] *Duly sworn to by Johnnie A. Jones, jurat omitted in printing.*

[fol. 203]

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

Number .....

STATE OF LOUISIANA, Appellee,

vs.

DION TYRONE DIAMOND, Defendant-Appellant.

MEMORANDUM OF AUTHORITY IN SUPPORT OF RELATOR'S APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION

May It Please the Court:

Jurisdiction

This case is predicated on LSA-R.S. 14:103(7) of 1950, as amended, Disturbing the Peace. . . . "Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

This Honorable Court has supervisory jurisdiction under Section 10, Article 7, The Constitution, State of Louisiana of 1921, and Section 7, Rule 13 of this Honorable Court.

Syllabuses

"The likelihood, however great, that substantive evil result cannot alone justify a restriction upon freedom of speech or press, but the evil itself must be substantial and serious and even the expression of legislative preference or beliefs cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant curtailment of liberty of expression." *Graham* v. *Jones*, 200 La. 137, 7 So. (2d) 688 (1942).

"The constitutional guarantee of due process of law does not mean a procedure that endangers the innocent, but it means procedure that perserves those enduring principles enunciated in the Bill of Rights and the preserva-

tion of those basic rights termed inalienable in the Declaration of Independence." *State* v. *Straughan*, 229 La. 1036, 87 So. (2d) 523 (1956).

"The right of personal liberty is one of fundamental rights guaranteed to every citizen, and any unlawful interference therewith may be resisted." *City of Monroe* v. *Ducas*, 203 La. 974, 14 So. (2d) 781 (1943).

[fol. 204] "An act or conduct, however reprehensible is not a "crime" in Louisiana unless it is defined and made a crime clearly and unmistakably by statute." *State* v. *Sanford, et al.*, 203 La. 961, 14 So. (2d) 778 (1943).

"Penal laws prohibiting the doing of certain things and providing a punishment for their violation should not admit of such a double meaning that citizens may act upon the one conception of its requirements and the Courts upon another. One cannot be held accountable or subjected to a criminal prosecution for any act of commission unless that act has first been denounced as a crime in a statute that defines the act denounced with such precision that person sought to be held accountable will know his conduct falls within the purview of the act intended to be prohibited by and will be subject to the punishment fixed in the statute." *State* v. *Christine*, 118 So. (2d) 403 (April 7, 1960).

"A penal statute which does not aim specifically at evils within the allowable area of state control but on the contrary, sweeps within its ambit other activities that in ordinary circumstances constitute an exercise of freedom of speech or of the press. The existence of such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials, against particular groups, deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might be regarded as within its purview. Such a statute is invalid on its face." *Thornhill* v. *Alabama*, 310 U. S. 88 (1940).

"A state cannot, consistently with the freedom of religion and the press guaranteed by the First and Four-

teenth Amendments, impose criminal punishment on a person for distributing religious literature on the sidewalk of a company-owned town contrary to regulations of the town's management, where the town and its shopping district are freely accessible to and freely used by the public in general, even though the punishment is attempted under a State Statute making it a crime for anyone to enter or remain on the premises of another after having been warned not to do so." *Marsh* v. *Alabama*, 326 U. S. 501 (1945-1946).

"The fundamental concept of liberty embodied in the Fourteenth Amendment embraces the liberties guaranteed by the First Amendment." *Cantwell* v. *Connecticut*, 310 U. S. 296, at p. 303 (1940).

Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, or creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, is, nevertheless, protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups. [fol. 205] e.g., *Chaplinsky* v. *State of New Hampshire*, 315 U. S. 568, at pages 571-572, 62 S. Ct. 766 at page 768; *Bridges* v. *California*, 314 U. S. 252, 262, 62 S. Ct. 190, 203; *Craig* v. *Harney*, 331 U. S. 367, 372, 67 S. Ct. 1249, 1255.

". . . these records contain no evidence to support a finding that petitioners disturbed the peace, either by outwardly boisterous conduct or by passive conduct

likely to cause a public disturbance, we hold that these convictions violated petitioners' rights to due process of law guaranteed them by the Fourteenth Amendment to the United States Constitution." *Garner, et al.* v. *State of Louisiana*, 82 S. Ct. 248 (December 11, 1961).

Respectfully submitted,

Attorney for Relator: Johnnie A. Jones

Of Counsel:

Jack Greenberg, 10 Columbus Circle, New York 19, New York.

Wiley A. Branton, 119 E. Barraque Street, Pine Bluff, Arkansas.

Certificate of service (omitted in printing).

[fol. 206]

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

NEW ORLEANS

No. 46,454

STATE OF LOUISIANA,

v.

DION TYRONE DIAMOND.

ORDER DENYING APPLICATION FOR WRITS OF CERTIORARI, MANDAMUS AND PROHIBITION—January 3, 1963

In re: Dion Tyrone Diamond applying for writs of certiorari, mandamus and prohibition.

The application is denied. We find no error in the rulings complained of.

JBF, JBH, FWH, EHMcC, WBH, JWS, FWS.

[fol. 207]

IN THE SUPREME COURT OF THE STATE OF LOUISIANA

Number 46454

STATE OF LOUISIANA, Appellee,

vs.

DION TYRONE DIAMOND, Defendant-Appellant.

PETITION FOR STAY OF EXECUTION—Filed January 7, 1963

To the Honorable, Chief Justice and Associate Justices of the Supreme Court of the State of Louisiana:

The petition of Dion Tyrone Diamond, defendant in the above entitled and numbered cause, (hereinafter called "Petitioner") with respect represents:

—1—

That the decree of this Honorable Court, rendered Thursday, January 3, 1963, refusing his Application For Writs Of Certiorari, Mandamus and Prohibition and, thus, affirming the verdict and sentence of the Nineteenth Judicial District Court of Louisiana, is final, there being no right of rehearing therefrom.

—2—

Petitioner avers that the opinion and decree of this Honorable Court deprives him of his rights guaranteed him by Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, as amended, and by the First and Fourteenth Amendments to the Constitution of the United States of America, depriving him of his freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws as constitutionally guaranteed all citizens of the State of Louisiana and of the United States, race notwithstanding.

—3—

Petitioner avers that the opinion and decree of this Honorable Court deprives him of his rights guaranteed him under Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, as amended, and by the First and Fourteenth Amendments to the Constitution of the United States; that he was tried and convicted, over his protest, without due process of law, to-wit:

[fol. 208]

a) That petitioner did not, overtly, engage in any acts of violence or intimidation or acts of foreseeability of disturbing the peace or the public, nor did he engage in any activity being denounced as a crime by LSA-R.S. 14:103(7) of 1950, as amended, nor is the activity in which he engaged is a crime embraced in the criminal processes of the State of Louisiana, except being contrary, obnoxious and/or repugnant to the aforesaid constitutional provisions, respectively.

b) That while the arrest, charge, conviction and sentence were for "Disturbing the Peace," there was not a disturbance of the peace, except for the activity in which petitioner engaged to protest racial segregation and that the use of the criminal processes in such a situation denies and deprives petitioner of his rights, privileges, immunities and liberties guaranteed to him, a citizen of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

c) That the arrest, charge, conviction and sentence are all contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes petitioner did not conduct himself in any way which disturbed or tended to disturb the peace. However, the evidence did establish that on January 30 and 31, 1962, petitioner made speeches in front of the Student Union Building on the campus of Southern University, a segregated institution of education for Negro college students, encouraging the student body thereof to unitedly protest racial segregation in the Baton

Rouge community, which did not constitute a violation of a "Disturbing The Peace Statute," except depriving petitioner of freedom of speech, due process of law and equal protection of the laws guaranteed to him, a citizen of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

—4—

Petitioner avers that he timely raised the next preceding questions in the Trial Court at the time of his arraignment and after his conviction in a motion for a new trial and in this Honorable Court by his Assignment of Errors.

—5—

Petitioner avers that he is desirous of applying to the Supreme Court of the United States for a Writ of Certiorari and/or Review, or appeal, to review the decision of this Honorable Court upon the issues shown by the record in this case.

—6—

Petitioner desires that he be given a Stay or Delay in which to make the aforesaid application to the Supreme Court of the United States; and that the decree or mandate of this Honorable Court be Stayed so that petitioner will have an opportunity to so present his application to the Supreme Court of the United States for relief.

[fol. 209] Wherefore, petitioner prays that, after due consideration, this Honorable Court grant him a reasonable "Stay of Execution" and that he be permitted a delay of ninety (90) days in which to prepare and file in the Supreme Court of the United States his Application for a Writ of Certiorari and/or Review, or appeal, to review the decision of this Honorable Court and that the decree and mandate of this Honorable Court be withheld, accordingly.

And for all general and equitable relief.

Attorney for Petitioner: Johnnie A. Jones

Of Counsel:

Jack Greenberg, 10 Columbus Circle, New York 19, New York.

Wiley A. Branton, 119 E. Barraque Street, Pine Bluff, Arkansas.

Certificate of Good Faith

I, the undersigned, do hereby certify that the foregoing petition and application is made in good faith, and that I do verily believe that petitioner is entitled, in law, to the relief sought.

Baton Rouge, Louisiana, this 7th day of January, 1963.

Johnnie A. Jones

Order Granting Stay—January 10, 1963

Let petitioner, Dion Tyrone Diamond, be granted a "Stay of Execution" of the decree of this Honorable Court for a period of 90 days, upon his furnishing bond in an amount to be fixed by the District Judge.

New Orleans, Louisiana, this 10th day of January, 1963.

Jno. B. Fournet, Chief Justice.

Certificate of service (omitted in printing).

[fol. 210] Praecipe (omitted in printing).

[fol. 213] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 214]

SUPREME COURT OF THE UNITED STATES

No. 979, October Term, 1962

DION TYRONE DIAMOND, Petitioner,

vs.

LOUISIANA.

ORDER ALLOWING CERTIORARI—May 27, 1963

The petition herein for a writ of certiorari to the Supreme Court of the State of Louisiana is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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IN THE

Supreme Court of the United States

October Term, 1962

No. [redacted] 100

DION TYRONE DIAMOND,

Petitioner,

—v.—

STATE OF LOUISIANA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. .....

DION TYRONE DIAMOND,

Petitioner,

—v.—

STATE OF LOUISIANA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered in the above entitled case on January 3, 1963.

Citation to Opinions Below

The opinions below are not reported. The Nineteenth Judicial District Court for the Parish of East Baton Rouge filed a series of per curiam opinions ruling upon the petitioner's bill of exceptions which were dated November 8, 1962 (R. 23-41), and are printed in the appendix hereto at p. 3a.

The Supreme Court of Louisiana entered an order denying the applications for writs of certiorari, mandamus and prohibition (R. 206), which is unreported but is set forth in the appendix hereto, *infra*, p. 25a.

Jurisdiction

The judgment of the Supreme Court of Louisiana was entered January 3, 1963 (R. 206). The jurisdiction of this Court is invoked under 28 U. S. C., §1257(3), petitioner claiming rights, privileges and immunities under the Fourteenth Amendment to the Constitution of the United States.

Question Presented

Whether, where petitioner engaged in making speeches—an activity within the area of free expression protected by the Constitution—he was denied due process under the Fourteenth Amendment when punished under a state law containing general and indefinite prohibitions against disturbing the peace which are not narrowly drawn to define and prohibit specific conduct?

Statutory and Constitutional Provisions Involved

1. This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. This case also involves Louisiana Revised Statute, 14:103 which provides as follows:

> §103. *Disturbing the peace*
>
> A. Disturbing the peace is the doing of any of the following in such manner as would foreseeably disturb or alarm the public:
>
> (1) Engaging in a fistic encounter; or
>
> (2) Using of any unnecessarily loud, offensive, or insulting language; or

(3) Appearing in an intoxicated condition; or

(4) Engaging in any act in a violent and tumultuous manner by any three or more persons; or

(5) Holding of an unlawful assembly; or

(6) Interruption of any lawful assembly of people; or

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars or imprisoned for not more than ninety days, or both.

B. Any person or persons, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, while in or on the premises of another, whether that of an individual person, a corporation, a partnership, or an association, and on which property any store, restaurant, drug store, sandwich shop, hotel, motel, lunch counter, bowling alley, moving picture theatre or drive-in theatre, barber shop or beauty parlor, or any other lawful business is operated which engages in selling articles of merchandise or services or accommodation to members of the public, or engages generally in business transactions with members of the public who shall:

(1) prevent or seek to prevent, or interfere or seek to interfere with the owner or operator of such place of business, or his agents or employees, serving or selling food and drink, or either, or rendering service

or accommodation, or selling to or showing merchandise to, or otherwise pursuing his lawful occupation or business with customers or prospective customers or other members of the public who may then be in such building, or

(2) prevent or seek to prevent, or interfere or seek to interfere with other persons who are expressly or impliedly invited upon said premises, or with prospective customers coming into or frequenting such premises in the normal course of the operation of the business conducted and carried on upon said premises, shall be guilty of disorderly conduct and disturbing the peace, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the parish jail for not more than six months, or by both such fine and imprisonment. (As amended Acts 1960, No. 70, §1.)

Statement

Petitioner, Dion T. Diamond, seeks review of his conviction of the crime of "disturbing the peace" in the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge. Petitioner was charged in that Court by an information (R. 1) filed March 8, 1962, in case No. 42,917 which alleged that on January 30 and 31, 1962, he:

> . . . unlawfully did violate L.R.S. 14:103 in that he, not a student of Southern University, did enter upon the premises of Southern University and there engage in and encourage students of Southern University to hold unruly, unauthorized demonstrations on the Campus and did lead and encourage said students to march through the University buildings while classes were being conducted and did encourage said students

> to boycott and leave the classes in such manner as would foreseeably disturb and alarm the public . . .

Petitioner was arraigned and he entered a plea of not guilty March 8, 1962 (R. 42). On March 12, 1962, the trial court entered an order, over petitioner's objection, granting the State's motion to consolidate this case for trial with five other separate changes then pending against petitioner (R. 42). But, eventually, case No. 42,917 was tried separately (cf. R. 59), petitioner was convicted only on this charge, and the present petition thus involves only the charge quoted above. Petitioner has not been brought to trial on the other informations, which included allegations that he violated LSA-R.S. 14:103 by holding unlawful assemblies and also by interrupting lawful assemblies.[1]

Before trial petitioner filed an application for a bill of particulars (R. 9) and a motion to quash the information (R. 3), both of which were overruled (R. 44). Trial was held May 8, 1962, and petitioner was found "guilty as charged" (R. 44) by the Court sitting without a jury. A motion for new trial (R. 12) was overruled May 24, 1962 (R. 45). In the motion to quash and the motion for new trail petitioner raised federal constitutional objections asserting that the statute as applied to him was unconstitutionally vague and that it violated his rights to free speech

---

[1] Copies of 3 of the 5 other informations appear in this record (R. 6-8), having been filed in connection with petitioner's motion to quash. Case No 42,615 alleged that petitioner violated LSA-R.S. 14:103 by holding unlawful assemblies, and No. 42,616 alleged a violation of the same statute by interrupting lawful assemblies. Case No. 42,612 charged that petitioner violated LSA-R.S. 14:103.1, by refusing to leave the premises of Southern University when requested to do so by authorized University personnel. All three informations related to the period January 29 through February 1, 1962. Other pending informations charged petitioner with vagrancy under LSA-R.S. 14:107 and with trespass under LSA-R.S. 14:63.

and assembly, as is set forth in more detail below, p. 11, et seq.

Petitioner was sentenced to pay a fine of $100 and costs, or in default of the fine, to be confined in the parish jail for 30 days, and, in addition, to be confined in the parish jail for 60 days (R. 45).

On November 8, 1962, the trial court filed a series of per curiams to petitioner's bills of exceptions (R. 23-41). Thereafter, on or about November 21, 1962, petitioner applied to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition seeking to invoke the court's supervisory powers (R. 195). The writs were denied January 3, 1963, in an order by the Supreme Court of Louisiana stating (R. 206):

> The application is denied. We find no error in the rulings complained of.

Execution of the judgment was stayed for 90 days on January 10, 1963, to allow petitioner to seek review in this Court (R. 209).

The events leading to petitioner's arrest were as follows. Southern University in East Baton Rouge Parish Louisiana is a school having about 4400 students (R. 128). The school had been the scene of a series of demonstrations and meetings by students from about December 15, 1961 until the time of petitioner's arrest on February 1, 1962 (R. 89). Some students at Southern were boycotting classes until the situation of students who had been arrested in anti-segregation demonstrations was resolved with the school (R. 130, 133, 134). Dion T. Diamond, who was not a student at Southern University, was first observed on the campus by the State's witnesses (University employees) on January 30, 1962. The evidence at the trial related to a series

of speeches made by Diamond to students in a quadrangle on the campus on January 30 and 31, 1962. There was also evidence as to the circumstances of his arrest on February 1, 1962. There was no evidence that petitioner was ever ordered not to enter the campus, or to leave it, and no evidence that he was ever told that he could not make speeches on the campus or that he needed any permission to do so. The University registrar testified that the school was a public institution, and that "anyone may come there who wishes" (R. 7).

1. *Events of January 30, 1962.*

Between 9:30 and 10:00 A.M. Diamond was seen by the Dean of Students Marvin Harvey (R. 113). Diamond was talking to three to four hundred students in a quadrangle near the student union building (R. 113). Dean Harvey said that Diamond was "talking about the importance of demonstrating and staying out of classes" (R. 113). After about 15 minutes the meeting broke up and the students went in various directions (R. 114). The Dean stated that during the speech the students were listening, clapping and indicating "expressions of approval" (R. 115). The Dean said that he had not authorized Diamond to have a meeting (R. 115).

That afternoon at about 1:00, Dean Harvey observed about 40 students walking around the campus with signs (R. 115-116).[2]

---

[2] A defense witness, Jeanette Gilliam, a former student at Southern, said that she was present at a speech made by Diamond in the same area at about 12:00 noon on the 30th. None of the State's witnesses mentioned this speech. Miss Gilliam stated that Diamond asked students to stay out of classes, but that he did not advocate students going into classrooms and taking students out of classes (R. 179-181).

2. Events of January 31, 1962—morning.

Diamond made another speech at the same place at a time variously estimated at 9:15 to 9:45 A.M. before a group estimated by the school's chief security officer William Pass at two to three hundred (R. 66) and estimated by Dean Harvey at four to five hundred (R. 116). Pass stated that this was a regular school day, but that students at that time had been boycotting classes on the campus for three or four days (R. 66; 96). In his speech Diamond told the students not to go to classes; that the faculty was supporting them and had signed some type of petition; and that they should show their gratitude by not going to classes (R. 68). Dean Harvey said that the tenor of the speech was the same as that of the previous day (R. 117); that he had not authorized the meeting (R. 117); that it lasted between 15 and 20 minutes (R. 117); and that he started toward Diamond to inform him that he did not have permission to hold the meeting, but that Diamond ceased speaking and the group dispersed before he got there (R. 116-117).

3. Events of January 31, 1962—afternoon.

Security officer Pass and his assistant Willie Harris testified about a speech Diamond made during the noon hour on January 31. Harris estimated that five to six hundred students were there (R. 149); Pass stated there were about the same number or possibly more than were at the morning speech, e.g., two to three hundred (R. 69). Pass stated that "Diamond told the students that we will go through the classrooms and if necessary we will put them out of the classrooms" (R. 71). Harris said that Diamond was pleading for more followers from the student body (R. 155); that he urged the students to stay out of classes and was calling for at least fifty percent of the stu-

dents to support him (R. 155); and that Diamond told the students "let's go through the classrooms" (R. 156). Dean Harvey described this speech by saying that it "concerned principally the boycotting of classes" (R. 118).

According to Dean Harvey, about one hour after this speech he observed at least a hundred students begin to go from one classroom building to another carrying signs; that this was a noisy procession which disturbed people in the buildings where classes were being conducted at the time; and that this lasted over half an hour (R. 118-119). Mr. Pass said that the students were walking on the campus and through the classrooms singing and stomping in a very loud manner which caused a disturbance for over an hour (R. 71-72); that they carried signs (R. 73-76); and that classes in progress were disturbed (R. 72-73). His assistant, Harris, also recounted this event saying that the students were "pulling on doors, stomping on the halls" (R. 155); and that they were disturbing the classes (R. 155). No witness testified that anyone was actually "pulled" from any classroom. Pass testified that no one was injured and that there were no fights (R. 110).

None of the witnesses testified that Diamond did anything but make the speeches mentioned above. No witness testified that Diamond entered any University building. Pass and Harris both stated that they did not see Diamond in any of the buildings (R. 92; 156). No witness testified that Diamond carried any signs or participated in making them (cf. R. 88). On cross examination Pass was asked (R. 95):

> Q. Now, what did the accused do other than to make a speech? A. That is all I witnessed him doing. He just made a speech.

4. *Events of January 31, 1962—evening.*

At about 6:00 P.M. on January 31 an official meeting of the student senate was held in the "old gymnasium", at which Dean Harvey announced that this was the only authorized student meeting, and the president of the student senate, Murphy Jackson, spoke urging the students to go to classes. Murphy Jackson testified that Diamond sought permission to speak, but when this was refused Diamond left the meeting without causing any trouble (R. 174); that Diamond asked students who wanted to have an "outery" not to disturb the meeting and to be quiet or to leave (R. 175). Dean Harvey said that when Diamond left the meeting about 125 students also left (R. 124). Shortly afterwards there was an impromptu outdoor gathering outside the "new gymnasium" at which Diamond and a number of students spoke (R. 124-125, 186). Defense witnesses testified that on this occasion Diamond reprimanded the students for reportedly having gone through the classroom buildings that afternoon (R. 181, 183, 186-187).

5. *Events of February 1, 1962.*

On the morning of February 1, Diamond arrived on the campus in a taxicab with several other persons (R. 188-189). As soon as he got out of the taxicab he was placed under arrest by Willie Harris, the assistant security officer who was also a deputy sheriff (R. 87, 107-108, 144). Harris was accompanied by Chief Security Officer Pass who drove the two of them to Baton Rouge jail. Pass and Harris both stated that on this occasion they merely observed Diamond getting out of the taxicab and that Harris immediately placed him under arrest. Harris had no arrest warrant (R. 145). Harris stated that he had wanted to arrest Diamond on the previous day during the noon speech, but had been unable to reach him because of the

crowd (R. 153). He stated that he arrested Diamond for "holding an unlawful assembly" the previous day (R. 148); and that no one told him to make the arrest (R. 153). Pass denied having ordered or requested Harris to make the arrest, or having made the arrest himself (R. 106).

How the Federal Questions Were Presented

The federal questions sought to be reviewed here were raised in the trial court on March 23, 1962, by petitioner's Motion to Quash the information (R. 3-5). In this motion petitioner objected that the statute under which he was charged was unconstitutionally vague and that it infringed his right of free speech in violation of the Constitution of the United States asserting, *inter alia*:

> 2. That LSA-R.S. 14:103 of 1950, as amended, should be declared void for vagueness, in that, said Statute is so vague on its face that one can not reasonably be expected to know what conduct is prohibited which could form the basis for a criminal prosecution.
>
> 3. That said Statute is so vague in its application as to violate the due process clause to the Fourteenth Amendment to the Constitution of the United States of America.
>
> • • • • •
>
> 7. That the said Bill of Information is insufficient to charge a crime under the provisions of LSA-R.S. 14:103 of 1950, as amended, except that the Statute be unconstitutional under the Constitution of the State of Louisiana and, as applied, violative of freedom of speech and assembly guaranteed to defendant by the First Amendment to the Constitution of the United States of America and a denial of due process and equal protection of the laws clauses as guaranteed to

> defendant by the Fourteenth Amendment to the Constitution of the United States of America, of which he is a citizen (R. 3-4).

The motion was argued, submitted and denied on April 9, 1962 (R. 44).

At the conclusion of the trial petitioner was found guilty as charged (R. 44). Thereafter, on May 23, 1962, petitioner filed a Motion for New Trial (R. 12-16). In the Motion for New Trial petitioner again objected that his conviction under "a general disturbing of the peace statute" violated his rights of free speech as protected by the Fourteenth Amendment to the Constitution. In the Motion for New Trial petitioner asserted, *inter alia*:

> 2. That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendant, on January 30 and 31, 1962, merely made speeches in protest of racial segregation to a small group of college students assembled in front of the Student Union Building on the campus of Southern University whereby he encouraged the students to stay out of classes in support of the freedom movement protesting racial segregation in the Baton Rouge community, the activity being not proscribed by a general disturbing of the peace statute, except depriving the defendant of his constitutional protections guaranteed by the First and Fourteenth Amendments to the Constitution of the United States of America.
>
> * * * * *
>
> 4. That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendant, as did others, between December 15, 1961 and February 1,

1962, made many speeches or public addresses on the campus of Southern University and to its student body urging or encouraging the students of said University to stay out of classes in protest of racial segregation and in support of the freedom movement in which students of the various Negro colleges and universities throughout the nation and particularly in the Southern States were participating; and that, to sustain a verdict of guilty in such case made and provided violates the defendant's freedom of speech accorded by the First Amendment to the Constitution of the United States of America and, furthermore, denies him due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, the evidence being such that it is impracticable to determine specifically who was responsible for the actions of the students of Southern University who participated in the freedom movement demonstrations. The defendant being not charged with conspiracy can not be held accountable for malicious acts of others, if there were any such acts.

* * * * *

6. That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendant did not conduct himself in any way which disturbed or tended to disturb the peace. However, the defendant, on January 30 and 31, 1962, did make speeches in front of the Student Union Building on the campus of Southern University encouraging the students of Southern University, a segregated institution for Negro college students, to protest (as a unified student body) racial segregation in the Baton Rouge community; that such activities in which the defendant engaged does not constitute a violation of a disturbing the peace Statute.

except depriving defendant of freedom of speech, due process of law and equal protection of the laws guaranteed the defendant, a citizen of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

* * * * *

8. That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States of America; that said verdict deprives the defendant of his freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws as guaranteed by the provisions of the Constitution of the State of Louisiana and of the United States of America, respectively (R. 12, 13, 14, 15).

The Motion for New Trial was overruled May 24, 1962 (R. 45).

Petitioner filed a Bill of Exceptions (R. 17-22) objecting to the overruling of the Motion to Quash (Exception No. 1) and the overruling of the Motion for New Trial (Exception No. 9). The trial court wrote a per curiam to Bill of Exception No. 1 (R. 23-26). A portion of the per curiam dealing with the petitioner's vagueness objection is as follows (R. 24-25):

In Paragraph 2 of the motion to quash defendant urges that the statute (LSA-R.S. 14:103, as amended) should be declared void for vagueness, in that no one could reasonably be expected to know what conduct is prohibited. The statute sets forth six different specific acts, disjunctively, any one of which, if done in such a

manner as foreseeably would disturb or alarm the public, constitutes the crime. Sub-section 7 covers the commission of any other act in such a manner as to unreasonably disturb or alarm the public. The Supreme Court of Louisiana in the case of Town of Ponchatoula v. Bates, et al., 173 La. 824, 138 So. 851, upheld the constitutionality of a town ordinance denouncing the crime of disturbing the peace which read in part: "It shall be unlawful for any person within the corporate limits of the Town of Ponchatoula to engage in a fight or in any manner disturb the peace." The court held that it was not necessary that the ordinance define the offense for the reason that no better definition for the offense could be found than that contained in the ordinance itself. The Supreme Court of Louisiana cited this case in denying writs in the case of Louisiana v. Jannette Hoston, et al., No. 35,567 on the Criminal Docket of the Nineteenth Judicial District Court and the two cases consolidated with it. See also these cases reported in 82 Supreme Court Reporter 248 wherein the court did not pass upon the constitutionality of the statute involved.

Paragraph 3 of the motion to quash alleges that the *statute is so vague in its application* as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States of America. On the hearing on the motion no evidence was introduced by the defendant to show that the statute was being applied in such an alleged unconstitutional manner.

The portion of the opinion rejecting petitioner's free speech objection was as follows (R. 26):

Article 7 of the motion to quash alleges that the bill of information is insufficient to charge a crime under LSA-R.S. 14:03 of 1950, as amended, "except that the

> Statute be unconstitutional under the constitution of the State of Louisiana" and, as applied, is violative of freedom of speech and assembly guaranteed to defendant by the First and Fourteenth Amendments to the Constitution of the United States of America. This court felt that the bill of information as drawn did sufficiently charge the commission of a crime under the statute and that the statute was constitutional. As to the manner in which it was being applied no proof was introduced by the defendant at the hearing on the motion to show that it was being applied in any unconstitutional manner.

In overruling petitioner's Motion for New Trial the court stated with respect to petitioner's constitutional objections that "This Court was also satisfied that the statute denouncing the crime is constitutional" (R. 40). Petitioner again asserted his constitutional objections in the "Applications for Writs of Certiorari, Mandamus and Prohibition," etc. filed in the Supreme Court of Louisiana (R. 195-202). Petitioner asserted, *inter alia*:

> 5. That the Honorable Court aquo erred in overruling relator's Motion for New Trial; that the evidence adduced on the trial of this cause clearly establishes that relator, on January 30 and 31, 1962, merely made speeches in protest of racial segregation to a small group of college students assembled in front of the Student Union Building on the campus of Southern University whereby he encouraged the students to stay out of class in support of the freedom movement protesting racial segregation in the Baton Rouge community, the activity being not proscribed by a general Disturbing of the Peace Statute, except depriving relator of his constitutional protections guaranteed by

the First and Fourteenth Amendments to the Constitution of the United States of America (R. 196-197).

Petitioner made similar constitutional objections raising the free speech defense in paragraphs 6, 8, 9, 10 and 11 of the petition.

The Supreme Court of Louisiana denied this application on January 3, 1963 (R. 206).

REASONS FOR GRANTING THE WRIT

The Decision Below Conflicts With Decisions of This Court in That Petitioner Was Convicted for Engaging in His Constitutionally Protected Right of Free Speech Under a Law Too Vague and Indefinite to Conform to the Fourteenth Amendment's Requirements of Due Process.

This Court has demanded strict standards of statutory specificity when criminal laws touch upon the area of free speech and expression, because "First Amendment freedoms need breathing space to survive." *N.A.A.C.P.* v. *Button*, —— U. S. ——, 9 L. ed. 2d 405, 417-418; *Winters* v. *New York*, 333 U. S. 507; *Cantwell* v. *Connecticut*, 310 U. S. 296, 311; *Edwards* v. *South Carolina*, —— U. S. ——, 9 L. ed. 2d 697, 702-704; *Stromberg* v. *California*, 283 U. S. 359, 369. The statute under which petitioner was convicted sweeps within its ambit and punishes a great variety of conduct, including the constitutionally protected area of speech and expression, "under a general and indefinite characterization, . . . leaving to the executive and judicial branches too wide a discretion in its application," *Cantwell* v. *Connecticut*, *supra* (310 U. S. at 308). If conduct, such as petitioner's series of speeches to student groups on the Southern University campus, can be regulated and punished at all, it can only be reached under a law "narrowly drawn to define

and punish specific conduct as constituting a clear and present danger to a substantial interest of the State." *Cantwell* v. *Connecticut, supra* (310 U. S. at 311); *Edwards* v. *South Carolina, supra; Garner* v. *Louisiana*, 368 U. S. 157, 202 (concurring opinion); *Thornhill* v. *Alabama*, 310 U. S. 88, 105. Since nothing in the statute under which petitioner was convicted (LSA-R.S. 14:103) represents a legislative judgment that the specific conduct of petitioner alleged in the bill of information or proved at the trial should be prohibited, the conviction offends due process under the precedents cited above.

It is readily evident that the entire case against petitioner hinges upon things that he said rather than upon any nonverbal act. This is clear from the information which charges a series of activities, each of which includes a component of speech. It is charged that petitioner did "engage in and *encourage* students . . . to hold unruly, unauthorized demonstrations," and did "lead and *encourage* . . . students to march . . . " etc., and did "*encourage* . . . students to boycott and leave the classes . . . " (R. 1; emphasis supplied). And both the evidence and the court's statement of the basis of the finding of guilt make clear that the conviction rests on petitioner's speeches.[3] Although the information charged

[3] In ruling upon Bill of Exception No. 7 relating to the overruling of defendant's motion for a directed verdict, the court described the basis of its finding of guilt as follows (R. 37):

> "The court overruled the motion for the reason that the state, in the opinion of the court, had sustained its burden of proving the guilt of the defendant beyond a reasonable doubt. Reliable, competent evidence offered by the state showed that the defendant, a non-student, was present on the campus of Southern University on the dates alleged in the bill of information, and while there did, in speeches made by him in meetings not authorized by those in charge of such matters, encourage and exhort Southern University students to boycott classes and to march into the classrooms while classes were in session and to disrupt the classes, even to the extent of pulling the students from the classrooms, in such a manner as would foreseeably disturb and alarm the public."

that petitioner did "engage in" and "lead" as well as "encourage" the demonstrations and the march through the University buildings, the trial court regarded petitioner's speeches as sufficient to sustain the charge, on the theory that counseling others to do an act was equivalent to doing it personally (R. 34). Certainly the conviction cannot validly rest on the premise that petitioner did anything beyond speaking—for there is no evidence of any such acts. *Thompson* v. *City of Louisville*, 362 U. S. 199; *Garner* v. *Louisiana*, 368 U. S. 157; *Taylor* v. *Louisiana*, 370 U. S. 154.

The statute, therefore, must be measured against the strict standards of permissible vagueness which are applicable in the area of free speech. The inquiry in the present case is complicated by the fact that the record does not indicate what part or parts of LSA-R.S. 14:103 petitioner was found to have violated. Neither the prosecution nor the trial court expressly indicated which part of the law was relied upon for the charge or the conviction (R. 23). But defense counsel assumed, with reason, that the charge was pursuant to LSA-R.S. 14:103A(7).[4] This assumption was made explicit in the motion for new trial and the court's per curiam did not state that it was erroneous.[5] The as-

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[4] Section 14:103A(7) provides as follows:

"103. *Disturbing the peace*

A. Disturbing the peace is the doing of any of the following in such manner as would foreseeably disturb or alarm the public:

* * * * *

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

[5] The motion for new trial asserted that the verdict was "contrary to the law and the evidence" in that petitioner did not "engage in any activity that had been denounced as a crime by LSA-R.S. 14:103(7) of 1950, as amended, the Statute under which the defendant was charged" (R. 12). The per curiam stated (R. 40):

"The motion for a new trial alleges that the verdict is contrary to the law and the evidence. The Court heard all the evidence on the trial of the case and was convinced of the guilt of the accused beyond a reasonable doubt."

sumption that §14:103A(7) is the basis of the charge is reasonable because none of the matters charged in the information are readily identifiable as relating to any subsection of the statute other than this "catch-all" provision. Subsections A(1), A(3) and the entire subsection B are quite obviously not involved since nothing in the charge or the evidence is even remotely related to the activities mentioned therein.[6] There is almost equally scant reason to think that the conviction was founded upon any of the remaining subsections—A(2), A(4), A(5) or A(6)—since there was no allegation or evidence of "loud, offensive or insulting language" or of "violent and tumultuous" conduct by petitioner, and since whatever is meant by "holding . . . an unlawful assembly" and "interruption of any lawful assembly," separate informations charging these offenses were, and still are, pending against petitioner. However, because there may be some basis, however slight, for a tenuous contention that one or more of these subsections is involved, this possibility is dealt with in the subsequent part of this argument below at pp. 23-24. For the present, the argument is addressed to the far more likely possibility that the trial court regarded the case, as petitioner did, i.e., as founded upon LSA-R.S. 14:103A(7).

This provision is the same law which was considered by this Court in *Garner* v. *Louisiana*, 368 U. S. 157.[7] The majority in *Garner*, *supra* (368 U. S. at 162, 163, 166, note 13) found it unnecessary to decide the vagueness and free speech claims, but these claims were fully discussed in and

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[6] Subsections A(1) and A(3) deal, respectively, with fistic encounters and intoxicated persons. Subsection B relates to interferences with certain types of businesses.

[7] LSA-R.S. 14:103 was amended in 1960 after the trial in *Garner*, to add what is now part B, but the law considered by this Court in *Garner*, Sec. 14:103(7) remains and is the same as the present Sec. 14:103A(7).

formed the basis of, the concurring opinion by Mr. Justice Harlan (368 U. S. at 196, et seq.). In Justice Harlan's view, this law was unconstitutionally vague as applied in all three of the factual situations presented in *Garner* and the cases consolidated with it (368 U. S. at 205). As that opinion made clear, the catch-all provisions of this law prohibiting "any other act [done] in such a manner as to unreasonably disturb of alarm the public," gives a defendant "no warning as to what may fairly be deemed to be within its compass" (368 U. S. at 207).

In this case (R. 25), as in *Garner*, the Louisiana courts have referred only to the definition of disturbing the peace given in an earlier case, *Ponchatoula* v. *Bates*, 173 La. 824, 827, 138 So. 851, 852, where it was said to include "any act or conduct of a person which molests the inhabitants in the enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary normal temperament." Indeed, to support its holding on the vagueness issue, the trial court even relied upon the Louisiana Supreme Court's ruling in *Garner* and its companion cases (R. 25). It is obvious, then, that this case does involve a vague and generalized conception of "disturbing the peace"; that the law has not been limited by construction; and that the law is applied here as it was in *Garner* to conduct within the area of speech and expression. This Court's opinions teach that such convictions deny due process. *Cantwell* v. *Connecticut*, *supra*; *Thornhill* v. *Alabama*, *supra*; *Terminiello* v. *Chicago*, 337 U. S. 1; *Edwards* v. *South Carolina*, *supra*.

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[8] The Louisiana Supreme Court itself questioned the validity of an earlier general "disturbing the peace" law applied to religious expression on vagueness grounds in *State* v. *Sanford*, 203 La. 961, 14 So.2d 778.

It is submitted that petitioner's advocacy that students voluntarily attending a public University refuse to attend classes as a form of protest was a form of speech on public issues which a state cannot prohibit, whatever may be one's view of the social utility of such a speech.[9] *Terminiello* v. *Chicago, supra.* The information and the court's per curiam (R. 37) make it clear that petitioner was charged and convicted for this lawful advocacy *and* for allegedly urging that students march into classroom buildings and disrupt classes. Cf. *Stromberg* v. *California*, 283 U. S. 359. But even if some or all of petitioner's speech could validly be prohibited by the State, it cannot be punished under a vague and general law such as LSA-R.S. 14:103A(7), which is as readily applicable to protected speech as it is to that which is not within the bounds of lawful advocacy, as, for example, "fighting words" (see *Chaplinski* v. *New Hampshire*, 315 U. S. 568). The law denies due process because "by its terms [it] appears to be as applicable to 'incidents fairly within the protection of the guarantee of free speech,' Winters v. New York, supra (333 U. S. at 509), as to that which is not within the range of such protection." *Garner* v. *Louisiana*, 368 U. S. at 207 (concurring opinion). Petitioner need not bear the burden of showing that the State could not have passed another, more specific, law to reach his conduct. *Thornhill* v. *Alabama*, 310 U. S. 88, 97, 98.

Previously, in the petition, we adverted to the possibility that the conviction might be attempted to be justified under some portions of the statute other than subsection A(7). Actually, each of these other subsections is equally vague and indefinite as applied to petitioner's conduct, giving no

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[9] The reasons for the student boycott of classes are not explained in the record except for a reference to "certain situations" concerning other students "who had been arrested several weeks previously" for "taking part in antisegregation demonstrations" (R. 130-133).

specific warning that this type of speech is prohibited in the circumstances of the case. To the extent that the law touches on the subject of expression, i.e., in terms of "unnecessarily loud, offensive or insulting language" and acts done in a "violent or tumultuous manner by three or more persons," there is no fair warning that petitioner's speech could be so regarded. But given the vagueness of subsection A(7), and the obvious possibility that it was the basis of conviction, a consideration of the vagueness of these other portions of the law may well be pretermitted.

Under the doctrine of *Stromberg* v. *California*, 283 U. S. 359, 368, if it cannot be known from the record whether or not a defendant was convicted under an unconstitutionally vague portion of a law affecting free speech, the conviction cannot stand because of the indeterminate possibility that it was premised on another portion of the law not subject to the same infirmity. In *Stromberg* the Court, noting that the defendant had been convicted under a general jury verdict which did not specify which of three statutory clauses it rested on, concluded that "if any of the clauses in question is invalid under the Federal Constitution, the conviction cannot be upheld" (283 U. S. at 368). The principle was followed in *Williams* v. *North Carolina*, 317 U. S. 387, 292, where the Court said:

> To say that a general verdict of guilty should be upheld though we cannot know that it did not rest on the invalid constitutional ground on which the case was submitted to the jury, would be to countenance a procedure which would cause a serious impairment of constitutional rights.

See also *Cramer* v. *United States*, 325 U. S. 1, 36, note 45; *Yates* v. *United States*, 354 U. S. 298, 312; *Thomas* v. *Collins*, 323 U. S. 516, 529. Here as in *Stromberg*, *supra*, there is

a clear and obvious possibility that the conviction was based upon an impermissibly vague portion of the law. Neither the accusation, the verdict, nor anything else in the record makes it certain that this conclusion is erroneous. The fact that the trier of the facts in *Stromberg* was a jury and in this case was a judge does not represent a significant distinction, as *Thomas* v. *Collins, supra*, demonstrates. Since petitioner was charged with violation of LSA-R.S. 14:103, and given a single penalty for violating the law, which was upheld in its entirety, it follows that a determination that any part of the law denies due process must impair the entire conviction.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Minutes of Court Dated May 8, 1962

NINETEENTH JUDICIAL DISTRICT COURT

CRIMINAL SECTION

No. 42,917

[SAME TITLE]

Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

This case came on for trial in accordance with previous assignment, the accused, charged with violation of L.R.S. 14:103, being present in court represented by counsel. On motion of counsel for the accused, the court ordered a sequestration of witnesses in this case. Evidence was introduced, the case argued and submitted, and the court, for oral reasons assigned, found the accused guilty as charged, to which verdict counsel for the accused excepted and asked that a formal bill be reserved. Counsel for the accused gave notice in open court to the court and opposing counsel of his intention to apply to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition.

The court denied the request of counsel for the accused to release the accused on his old bond, and set a new bond for the accused pending sentence in the amount of $700.00.

Sentence deferred until May 24, 1962.

Minutes of Court Dated May 24, 1962

NINETEENTH JUDICIAL DISTRICT COURT

CRIMINAL SECTION

[SAME TITLE]

Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

The motion for new trial previously filed herein was argued, submitted, and the court, for oral reasons assigned, overruled the motion for new trial, to which ruling of the court counsel for the accused excepted and asked that a formal bill be reserved.

The accused, having previously been tried for violation of L.R.S. 14:103 and found guilty of said violation, was present in court represented by counsel. The accused was brought before the bar for sentence. Whereupon, the court sentenced the accused to pay a fine of $100.00 and costs, or in default of payment thereof to be confined in the parish jail for thirty days, and in addition thereto to be confined in the parish jail for sixty days, to which sentence counsel for the accused excepted and asked that a formal bill be reserved.

Counsel for the accused gave notice to the court and to the Assistant District Attorney in open court of his intention to apply to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition, and requested that the accused be released on his present bond. The court ordered the accused released on his present bond, and granted counsel for the accused until June 22, 1962 during which to apply to the Supreme Court for writs.

Per Curiam to Bill of Exception No. 1

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

The application for a bill of particulars was denied by the court for the reason that the information sought by the defendant did not pertain to the nature of the charge. LSA-R.S. 235. It will be noted that the defendant in his application did not call upon the district attorney to specify under which sub-section of LSA-R.S. 14:103 he was proceeding. The bill of information charges a violation of R.S. 14:103 and sets forth all the facts upon which the state was relying for a conviction. The state is not required to furnish to the defendant the evidence it intends to introduce to obtain a conviction. Likewise, the law does not require the state to supply the names of any witnesses to the defendant.

When the court rendered judgment denying defendant's application for a bill of particulars defendant objected to the ruling of the court and reserved a "formal" bill of exception, "and asked that the motion, the bill of information all be made a part of the record * * *." Defendant did not request that the ruling of the court be made a part of the Bill of Exception. Moreover, he did not specify the ground of his objection and did not make that ground a part of his Bill of Exception. Defendant's Bill of Exception does not have incorporated within it any of these mat-

ters and there is nothing attached to it. LSA-R.S. 15:498-499.

In objecting to the ruling of the court counsel for the defendant in reserving his Bill of Exception asked that the motion for a bill of particulars and the bill of information be made a part of the "record"—not a part of the Bill of Exception. The bill of information and the application for a bill of particulars were already part of the record. No part of the record becomes a part of the Bill of Exception unless it is incorporated therein or attached thereto and made a part thereof.

The motion to quash the bill of information was overruled by the court. In Paragraph 1 of the motion to quash defendant contends that the bill of information amounts to a multiplicity of charges growing out of the same incident or occurrence, yet he does not claim that the bill of information is faulty on the ground of duplicity. In fact, he alleges "that said alleged acts could only constitute a single crime * * *." The state contended that under the authority of LSA-R.S. 15:222 it had the right to cumulate the acts of the defendant in one count, since it was apparent that they were connected with the same transaction and constituted but one act and that it had charged them conjunctively in the bill of information. Defendant, as pointed out above, conceded that the acts of the defendant constituted but one crime. This court was of the opinion the state's position was correct. State v. Morgan, 116 So. (2d) 682, 238 La. 829; State v. Amiss, 89 So. (2d) 877, 230 La. 1003. Accordingly, the court overruled the motion to quash the bill of information on this ground of attack.

In Paragraph 2 of the motion to quash defendant urges that the statute (LSA-R.S. 14:103, as amended) should be

declared void for vagueness, in that no one could reasonably be expected to know what conduct is prohibited. The statute sets forth six different specific sets, disjunctively, any one of which, if done in such a manner as foreseeably would disturb or alarm the public, constitutes the crime. Sub-section 7 covers the commission of any other act in such a manner as to unreasonably disturb or alarm the public. The Supreme Court of Louisiana in the case of Town of Ponchatoula v. Bates, et al., 173 La. 824, 138 So. 851, upheld the constitutionality of a town ordinance denouncing the crime of disturbing the peace which read in part: "It shall be unlawful for any person within the corporate limits of the Town of Ponchatoula to engage in a fight or in any manner disturb the peace." The court held that it was not necessary that the ordinance define the offense for the reason that no better definition for the offense could be found than that contained in the ordinance itself. The Supreme Court of Louisiana cited this case in denying writs in the case of Louisiana v. Jannette Hoston, et al., No. 35,567 on the Criminal Docket of the Nineteenth Judicial District Court and the two cases consolidated with it. See also these cases reported in 82 Supreme Court Reporter 248 wherein the court did not pass upon the constitutionality of the statute involved.

Paragraph 3 of the motion to quash alleges that the *statute is so vague in its application* as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States of America. On the hearing on the motion no evidence was introduced by the defendant to show that the statute was being applied in such an alleged unconstitutional manner.

Article 4 of the motion to quash alleges as a fact that there was no disturbance of the peace by the defendant

within the definition of the crime. This court took the position that the bill of information charged a crime under the statute and that it would not be known whether the defendant committed the crime charged until after the state had put on its case.

Article 5 of the motion to quash alleges that the statute was being unconstitutionally applied because the defendant, a member of the Negro race, has been heretofore engaged in activities protesting racial segregation and had lately come to Southern University to resume his collegiate work there as a student; that when he attempted to speak out in the cause of justice and freedom he was arrested and jailed. On the trial of the motion to quash the defendant offered no proof to establish these alleged facts.

Article 6 of the motion to quash sets forth a conclusion to the effect that the use of the criminal processes of the State of Louisiana in the manner described in paragraph 5 of the motion denies and deprives the defendant of his rights, privileges, immunities and liberties guaranteed to him by the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States of America. In this connection, the defendant on the hearing of the motion offered no proof to show that defendant's constitutional rights had been violated in the manner described.

Article 7 of the motion to quash alleges that the bill of information is insufficient to charge a crime under LSA-R.S. 14:03 of 1950, as amended, "except that the Statute be unconstitutional under the constitution of the State of Louisiana" and, as applied, is violative of freedom of speech and assembly guaranteed to defendant by the First and Fourteenth Amendments to the Constitution of the United States of America. This court felt that the bill of

Per Curiam to Bill of Exception No. 1

information as drawn did sufficiently charge the commission of a crime under the statute and that the statute was constitutional. As to the manner in which it was being applied no proof was introduced by the defendant at the hearing on the motion to show that it was being applied in any unconstitutional manner.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 2

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was reserved to the ruling of the court overruling defendant's objection to the testimony incorporated in the Bill of Exception. The basis of the objection was that the testimony of this witness should not be considered by the court because no explanation had been made as to what a security officer is, as to whether or not he is a peace officer or sheriff. The court considered the objection to be premature, and informed counsel for the defendant that he could develop this point on cross-examination. As a matter of fact, the witness on direct examination later explained that he was not a peace officer and that his duties as security officer consisted of maintaining the safety of the faculty staff, the administrative body and students of Southern University, as well as the property of the university.

I wish to point out that counsel for the defendant in resserving his Bill of Exception used these words: "To which ruling, Your Honor, I except and ask that a formal bill be reserved." Counsel did not at that time request that the facts upon which the objection and ruling were based be made a part of the Bill of Exception, nor did he move that the objection, the ruling and the reasons for the ruling be made a part of the Bill of Exception. It is the judgment

Per Curiam to Bill of Exception No. 2

of this court that the Bill of Exception was improperly reserved. LSA-R.S. 15:499-500.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 3

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

After the state's witness, William Pass, answered the question set forth in this Bill of Exception, counsel for the defendant objected to any testimony about the signs "because there is nothing on those things to identify that the accused had the placards made or that he had anything to do with them, those could be anybody's signs." The court overruled the objection as being premature, taking the position that this witness could testify about his familiarity with the signs. The signs at this juncture were not being offered in evidence by the state. It was the position of the court that it would give the state the opportunity to show, if it could, that there was some connection between the signs and the defendant in this case. Later, the state was able to show by the testimony of this witness that he obtained some signs on the date of the alleged offense from Barracks B on the campus of Southern University and that a group of students from the university were carrying those signs, or similar signs, when they were marching on the campus and into four buildings thereon where classes were in progress after being encouraged by the defendant to go into the classrooms and disrupt the classes.

In reserving this Bill of Exception counsel for the defendant did not comply with the requirements of the law. LSA-R.S. 15:498-15:499. He merely excepted to the ruling in the

Per Curiam to Bill of Exception No. 3

following words: "To which ruling I except and ask that a formal bill be reserved." Although the minute clerk at the time of the reservation of the Bill of Exception took down the facts upon which the objection and the ruling were based, together with the objection, the ruling and the reasons for the ruling conformable to LSA-R.S. 15:499, counsel for the defendant, as stated above, did not request that this be done.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 4

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

After the testimony recited in this Bill of Exception the state offered in evidence some of the signs which had been identified by the witness as being the signs, or similar signs, which the students carried with them as they marched on the campus of the university and into the classrooms while classes were in progress, after they were encouraged by the defendant to disrupt the classes. Counsel for the defendant objected to the offering on the ground that the evidence was immaterial; secondly, that the witness had not testified that the defendant made the signs, or that the defendant had any knowledge of the signs being made, or that the defendant had instructed anybody to make the signs. The offering was also objected to on the ground that the defendant was not being tried for conspiracy and that the defendant was not responsible for what the students did, contending that all that the defendant did was to use freedom of speech. Objection was also made on the ground that the state had not laid a proper foundation for the introduction of the proffered evidence, in that the state had not accounted for the whereabouts of the signs from the date of the commission of the crime to the date of the trial and that it was possible that the signs could have been altered or changed.

The court permitted the signs (State-1, inscribed: "This is a Freedom Line! Don't Cross It"; State-2, inscribed: "Let's Twist Back to the Dorms. No Classes!"; State-3,

inscribed: "Please Stay Out!! Support Your Fellow Students"; and State-4, inscribed: "No Class Today, Sorry") to be introduced in evidence. The reason for the ruling as stated verbatim by the court at the time was: "This is not a case of theft where property has to be identified with that degree of particularity. This witness has testified where he found the signs, the students were in the process of making them there, and he saw either those signs or similar signs being carried by the students after they had been exhorted to go into the classrooms and get the students out of the classrooms, pull them out if necessary. This accused is charged with engaging in and encouraging the students to hold unruly, unauthorized demonstrations. Now, in heeding his words of encouragement it is always admissible to show what happened, that the students, being thus encouraged by the accused, proceeded to stamp and march and sing and carry these signs, even to the extent, to use the words of the accused himself, get them out of the classrooms, pull them out if necessary. Now, under the law there is a presumption that a man is presumed to know the natural consequences of his act, and I think that this accused, after so exhorting these students to swing into the classrooms, to march and to get the students out of there because the faculty is already behind them, and in effect if they refused to leave the classrooms to pull them out, and anything that these students did thereafter after being encouraged by this accused to do would be admissible, the natural consequence." * * * "He has said that he either saw these signs or similar signs being carried by the students, so I say it is not necessary in this type of case, because if we were trying these students for carrying signs which violated the law then that would be a different proposition, but the students are not being tried, the accused is being tried for disturbing the peace by urging them to do

Per Curiam to Bill of Exception No. 4

an unlawful thing, break up the classes, and, as I said, under 432 every defendant is presumed to intend the natural probable consequences of his act, and the law presumes that after he exhorts them to do what he did do or did tell them that they would resort to this type of activity, carry out his words of encouragement to break up the classes because the faculty was behind them and he was seeing to it, or going to see to it if he could, if the students would cooperate, to just break up the classes at Southern University so there wouldn't be any classes. Now in going about that he presumed the natural consequences of his act, they might sing, they might march, they might stomp and they might carry signs, and as long as this witness can say that these are similar signs that is enough for the court in this type of procedure, so I overrule the objection."

In reserving his Bill of Exception counsel for the defendant did so in the following words: "To which ruling we except and ask that a formal bill be reserved." This, in the opinion of the court, did not meet the requirements of the law. The minute clerk did, however, at the time take down the facts upon which the Bill of Exception and the ruling were based, together with the objection, the ruling and the reasons for the ruling in compliance with LSA-R.S. 15:499.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962
(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962
(Signed) BETTY BADY

Per Curiam to Bill of Exception No. 5

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was taken by the defendant when the court overruled defendant's objection to the testimony set forth in this Bill of Exception. The basis of the objection was that there had been no testimony that the defendant conducted the procession of students on the campus and into the classrooms. The court overruled the objection for the reason that it was up to the court (the court being the judge of the facts in the case) to determine whether or not the defendant conducted the procession.

The witness on the stand at the time was Marvin L. Harvey, Dean of Students of Southern University. As such, he testified it was his responsibility to grant or refuse permission for the holding of student meetings on the campus. He testified that he had not authorized the defendant to hold any student meetings on the campus during the dates in the bill of information. Such unauthorized meetings were held, he testified, at which the defendant addressed the students. After the meeting held on the morning of January 30, 1962 this witness observed that approximately forty students were walking around the campus carrying signs. This occurred about one o'clock that afternoon. On the following morning the defendant was addressing an unauthorized meeting of students, estimated

by the witness to be between four and five hundred in number. There was another such meeting of students held between 12:30 and 1 o'clock on that same day, at which the defendant spoke to the students, and at about the hour of 2 o'clock the same afternoon the students paraded through the classrooms in a noisy manner carrying signs. In one of the buildings this witness testified that some students left classes. The demonstrators numbered about one hundred and the demonstration lasted more than thirty minutes.

When this objection was urged there was already testimony in the record from Security Officer William L. Pass that he saw and heard the defendant speaking to a group of from two to three hundred students on the campus, at which meeting he heard the defendant tell the students not to attend classes, that they should show their gratitude by not going to classes since the faculty was behind them. At another meeting of about the same number of students he heard the defendant tell the group to go to the classrooms and pull the students therefrom.

Now, one of the meanings of the word "conduct" is to "direct in action or course." It was clear to the court that the defendant had conducted the procession and demonstration of the students on the campus and in the classrooms. Under LSA-R.S. 14:24 all persons concerned in the commission of a crime, whether present or absent, whether they directly commit the offense, aid and abet in its commission, directly or indirectly counsel or procure another to commit the crime, are principals.

For the reasons given in the other per curiams, the court is of the opinion that this Bill of Exception was improperly reserved.

Per Curiam to Bill of Exception No. 5

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 6

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was taken by the defendant after the testimony incorporated therein was given by the witness, Marvin L. Harvey, Dean of Students at the university. Counsel for the defendant, after ascertaining from the witness that unauthorized meetings on the campus had been held by students of Southern University on dates prior to the dates in the bill of information at which speeches were made, wanted to know from this witness what those speeches were about. The state objected. The court sustained the objection for the reason that it made no difference in the case on trial as to whether the law had been violated by others prior to the date of the crime charged in the bill of information. The court felt that whether the university had taken action as to those offenders was immaterial in the case at bar. The court was also of the opinion that it made no difference in the instant case whether the unlawful processions and demonstrations of the students on the dates alleged in the bill of information were brought about *solely* by the encouragement and exhortation of the defendant made by him on those dates or whether these processions and demonstrations were due in part to speeches that the students had heard from other speakers on other occasions prior to the date of this offense. The court took the position that the statute was violated when

Per Curiam to Bill of Exception No. 6

the state proved that the defendant had committed the acts alleged in the bill of information in such a manner as would foreseeably disturb or alarm the public. Whether the students who participated in the noisy processions and demonstrations had been impressed by the defendant's speeches encouraging and exhorting them to so act was, in the opinion of the court, immaterial for the reason that such speeches were of such a nature as to foreseeably disturb and alarm the public, regardless of the resulting action. The court had permitted the state to prove the resulting action for the reason that this defendant was presumed by law to intend the natural and probable consequences of his act. LSA-R.S. 15:432.

This court is of the opinion that this Bill of Exception was improperly reserved for the reasons given in the preceding per curiams.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 7

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was reserved to the action of the court overruling defendant's motion for a directed verdict of acquittal after the state had rested its case in chief. In his motion counsel for defendant contended that the state had failed to prove its case, claiming that the evidence adduced by the state was insufficient to warrant and/or sustain a conviction of the defendant.

The court overruled the motion for the reason that the state, in the opinion of the court, had sustained its burden of proving the guilt of the defendant beyond a reasonable doubt. Reliable, competent evidence offered by the state showed that the defendant, a non-student, was present on the campus of Southern University on the dates alleged in the bill of information, and while there did, in speeches made by him in meetings not authorized by those in charge of such matters, encourage and exhort Southern University students to boycott classes and to march into the classrooms while classes were in session and to disrupt the classes, even to the extent of pulling the students from the classrooms, in such a manner as would foreseeably disturb and alarm the public.

All of the testimony introduced by the state was transcribed by the clerk, but counsel for the defendant in reserving his bill of exception to the court's ruling did not request that the testimony be attached to or made a part

of the bill. When the court overruled the motion for a directed verdict, counsel for the defendant reserved his Bill of Exception in the following words: "To which ruling I except and ask that a formal bill be reserved."

This Bill of Exception does not have incorporated within it the testimony offered by the state in chief, nor does it have that testimony attached to it or made a part thereof.

At the conclusion of the trial, after all the evidence was in, counsel for the defendant again moved for a directed verdict of acquittal. The court, being convinced of the guilt of the defendant beyond a reasonable doubt, overruled the motion.

All of the testimony introduced in the case by the state and the defendant was taken down and transcribed by the clerk. In reserving a Bill of Exception to the court's ruling in overruling the last motion for a directed verdict of acquittal, counsel for the defendant did not request that all the testimony be made a part of the Bill of Exception. He merely excepted to the ruling and asked that "a formal bill be reserved." The Bill of Exception does not have the testimony incorporated in it, nor does it have the testimony attached to it or made a part thereof.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962
(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962
(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 8

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

No. 42,917

[SAME TITLE]

This Bill of Exception was reserved by the defendant to the court's verdict finding the defendant guilty as charged. The court found the defendant guilty as charged because it was convinced beyond a reasonable doubt of his guilt. The court heard all the evidence. That evidence was taken down and transcribed, but it was not made a part of this Bill of Exception. Counsel for the defendant merely excepted to the verdict "and asked that a formal bill be reserved."

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 9

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was reserved to the court's action in overruling defendant's motion for a new trial. The motion for a new trial alleges that the verdict is contrary to the law and the evidence. The court heard all the evidence on the trial of the case and was convinced of the guilt of the accused beyond a reasonable doubt. All of this evidence, although taken down and transcribed, was not incorporated in the motion for a new trial, nor was it attached to it or made a part of it. Counsel in reserving this Bill of Exception did not request that all the testimony be made a part of his bill of exception.

This court was also satisfied that the statute denouncing the crime is constitutional.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 10

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was reserved by the defendant to the sentence imposed by the court upon the defendant. A comparison of the sentence with the penalty provisions of the statute (LSA-R.S. 14:103) clearly shows it to be legal in every respect.

Respectfully submitted at Baton Rouge, Louisiana this 8th day of November, 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Order Denying Petition for Writ of Certiorari

SUPREME COURT OF LOUISIANA

NEW ORLEANS

No. 46,454

[SAME TITLE]

January 3, 1963

In re: Dion Tyrone Diamond applying for writs of certiori, mandamus and prohibition

The application is denied. We find no error in the rulings complained of.

JBF

JBH

FWH

EHMcC

WBH

JWS

FWS

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In the Supreme Court of the United States

OCTOBER TERM, 1963

DION TYRONE DIAMOND,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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No. 979

In the Supreme Court of the United States

OCTOBER TERM, 1962

DION TYRONE DIAMOND,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

Rule 19, Paragraph One, Subsection A of this Honorable Court's rules, states:

> "1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:
>
> > (a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decision of this court."

For the reasons hereinafter given, it is felt that this is not an appropriate case in which a Writ of Certiorari should issue, for the reason that a Federal question is not at issue herein and for the additional reasons, hereinafter stated, assuming that such a question is at issue, this Court has decided such question in conformity with the decision of the Louisiana State Supreme Court.

For the reasons hereinafter to be given, Respondent does not feel that the question presented is correctly stated in Petitioner's brief.

REASONS FOR DENYING THE APPLICATION FOR WRIT OF CERTIORARI

The statement of the case as set forth in petitioner's brief to this Honorable Court is substantially correct and will be accepted for the purpose of this argument. Petitioner was charged by bill of information which averred that he unlawfully did violate LSA-R.S. 14:103 in that he, not a student of Southern University, did enter upon the premises of Southern University and there engaged in and encouraged students of Southern University to hold unruly, unauthorized demonstrations on the campus, and did lead and encourage said students to march through the University buildings while classes were being conducted, and did encourage said students to boycott and leave the classes in such manner as would foreseeably disturb and alarm the public.

LSA-R.S. 14:103 states:

"Disturbing the peace is the doing of any of the following in such manner as would foreseeably disturb or alarm the public:

(1) Engaging in a fistic encounter; or
(2) Using of any unnecessarily loud, offensive, or insulting language.
(3) Appearing in an intoxicated condition; or
(4) Engaging in any act in a violent and tumultuous manner by any three or more persons; or
(5) Holding of an unlawful assembly; or
(6) Interruption of any lawful assembly of people; or
(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public. . . ."

A mere reading of the bill of information against petitioner and of LSA-R.S. 14:103 will readily reveal that the bill of information factually and circumstantially charges this accused with the violation of sub-section six (6), which states:

"Interruption of any lawful assembly of people . . ."

A reading of the per curiam of the trial judge to bill of exception No. Seven, cited at Page 20 (a) of petitioner's brief to this Honorable Court, is as follows:

"The court overruled the motion for the reason that the State, in the opinion of the Court, had sustained its burden of proving the guilt of the defendant beyond a reasonable doubt. Reliable, competent evidence offered by the State showed that

> the defendant, a non-student, was present on the Campus of Southern University on the dates alleged in the bill of information, and while there, did in speeches made by him in meetings not authorized by those in charge of such matters, encourage and exhort Southern University students to boycott classes and to march into the classrooms while classes were in session and to disrupt the classes, even to the extent of pulling the students from the classrooms, in such a manner as would foreseeably disturb and alarm the public."

Petitioner states that the question presented to the trial court and presented to this court is:

> "Whether, where petitioner engaged in making speeches—and activity within the area of free expression protected by the Constitution—he was denied due process under the Fourteenth Amendment when punished under a state law containing general and indefinite prohibitions against disturbing the peace which are not narrowly drawn to define and prohibit specific conduct?"

A reading of the law involved, R.S. 14:103, the bill of information, the evidence in this case and the findings of the trial court, will readily reveal that this accused was charged with violation R.S. 14:103 (6), which states:

> "Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public. . . .
>
> (6) Interruption of any lawful assembly of people. . . ."

Under LSA-R.S. 14:2 "foreseeably" is defined as follows:

> "Foreseeably refers to that which ordinarily would be anticipated by a human being of average reasonable intelligence and perception. . . ."

According to LSA-R.S. 14:24:

> "All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are principals."

The Louisiana Legislature, in common with the legislature of virtually every state, has sought to simplify its criminal law and procedure by abolishing the common law distinction between principals and accessories before the fact. The philosophy of such enactments is well-expressed by a statement of the Nebraska Court:

> ". . . If there ever was forceful reason for drawing a distinction between the procurer and doer, such reason has ceased to exist. Certainly, when one procures another to do a criminal act, such act is in effect the act of the procurer as well as that of the doer . . ." *Scharman v. State*, 115 Neb. 109, 112, 211 N.W. 613.

LSA-R.S. 14:24 merely sets forth that one who was an accessory before the criminal act at common law is now considered to be a principal. In the State of Louisiana, the accessory before the fact may be charged, prosecuted and convicted as a principal. *State v. Johnson*, 220 La. 170, 56 So. 2d 143.

Certainly no one would question that an assembly of students in a classroom receiving instructions dur-

ing school hours is not a lawful assembly of people, and likewise, no one would question the fact that a crowd of some one hundred persons going from one classroom building to another carrying signs and making noise, walking through classrooms, singing and stomping their feet in a very loud manner, would be anything but an interruption of said lawful assemblies of students in their classrooms. The foregoing is factually what occured as acknowledged by petitioner in his brief filed in this Honorable Court, at pages Eight and Nine. Petitioner was not charged with a criminal violation because he made speeches on the Southern University campus, nor was he convicted simply because he made speeches on the Southern University campus. Petitioner was convicted because he procured, encouraged, aided by direction and instruction these some one hundred students who actually marched through classes being conducted, causing a complete disruption of same. To grant petitioner immunity under the shield of the First Amendment, freedom of speech, under these circumstances, would be to grant immunity to the planner or plotter of any criminal activity. If any student were guilty on that occasion, of interrupting a class in session, a lawful assembly, this accused, by aiding directly or indirectly by his instructions, his counseling and having procured these students to disrupt these classes in session, although he, himself, did not actually disrupt the classes, is as guilty as they are. *LRS 14:23.*

LSA-R.S. 14:103, PARAGRAPH (6), IS NOT

VOID FOR VAGUENESS IN THAT SAID STATUTE IS SO VAGUE ON ITS FACE THAT ONE CAN NOT REASONABLY BE EXPECTED TO KNOW WHAT CONDUCT IS PROHIBITED WHICH COULD FORM THE BASIS FOR A CRIMINAL PROSECUTION AND SAID STATUTE IS NOT SO VAGUE IN ITS APPLICATION AS TO VIOLATE THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

The Louisiana Supreme Court, in the case of *State v. Bulot, et al; In re: Blaise, et al*, 175 La. 21, 142 So. 787, held that an act forbidding persons to unlawfully assemble for any unlawful purpose was not invalid as being so vague as to be violative of the constitutional requirement that every person shall be informed of the nature and cause of the accusation against him. They held that the word "unlawful" had a definite meaning in that it meant that which was not lawful, or that which was contrary to some express provision of law, and further held that the term "unlawful assembly for any unlawful purpose" meant to assemble for the purpose of doing some act or thing which the law prohibits. It would thus follow that the word "lawful" would, of course, correlatively be of sufficient conciseness so that a person of average, normal intelligence would understand it. Likewise, this Honorable Court in the case of *Chaplinsky v. State of New Hampshire*, 316 U.S. 568, held that Chapter 378,

Section 2 of the public laws of New Hampshire, which reads as follows:

> ". . . No person shall address any offensive, derisive or annoying word to any other person who is unlawfully in any street or other public place, nor call him by any offensive or derisive name, . . .",

was constitutional as against a contention of vagueness or generality, and in so holding held that the particular statute, punishing verbal acts was carefully drawn so as not to unduly impair liberty of expression, and not too vague for a criminal law. *Fox v. Washington*, 236 U.S. 273, 277; 35 S. Ct. 383, 384; 59 Law Ed. 573.

This Honorable Court in the case of *Irvin Feiner, Petitioner, v. The People of the State of New York*, 350 U.S. 268, at page 335 of the Court's decision, held the New York Penal Law, Paragraph 722, which provides as follows:

> "Any person who with intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall be deemed to have committed the offense of disorderly conduct:
>
> (1). . . .
>
> (2) Acts in such a manner as to annoy, disturb, interfere with, obstruct, or be offensive to others. . . ."

valid, as against the contention of generality and violative of the First Amendment to the Federal Constitution and the Fourteenth Amendment.

REASONS FOR DENYING WRIT OF CERTIORARI

Petitioner was not arrested, charged, tried and convicted for making a speech on the Southern University Campus. As stated in the bill of information, he was charged with having entered upon the premises of Southern University and there engaged in and encouraged students of Southern University to hold unruly, unauthorized demonstrations on the campus, and did lead and encourage said students to march through the University buildings while classes were being conducted, and did encourage said students to boycott and leave the classes, in such manner as would foreseeably alarm and disturb the public. The fact that petitioner was permitted to make several speeches from January 30, 1962, through January 31, 1962, without being arrested, would belie the alleged assertion and contention that he was arrested for making these speeches. Not until some of his audience actually marched through classrooms in session in a noisy manner, interrupting said classes, was this accused arrested and charged with this offense.

It is, therefore, respectfully submitted that the numerous cases cited by petitioner in support of protection under the First and Fourteenth Amendments are inappropriate.

This is not a case wherein petitioner was arrested and prosecuted because local police officers were honestly concerned with preventing a further breach of the peace. As a matter of fact, petitioner was arrested after the breach of the peace had been com-

mitted. It is not a constitutional principle that in order to preserve order the police must proceed against the crowd, whatever its size and temper, and not against the speaker. It is true that breach of peace statutes, like most tools of government, may be misused. Enforcement of these statutes calls for public tolerance and intelligent police administration. These, in the long run, must give substance to whatever this Court may say about free speech. But the possible misuse of a statute is not alone a sufficient reason to deny the State of Louisiana the power herein asserted, or so limit it by Constitutional construction as to deny its practical exercise. The power effectively to preserve order can not be displaced by giving a speaker complete immunity.

Petitioner further urges that this accused was charged, tried and found guilty of violating LSA-R.S. 14:103 (a), Subsection (7), which states:

> "Disturbing the peace is the doing of any of the following in such manner as would foreseeably disturb or alarm the public:
>
> (7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public. . . ."

It is contended by petitioner that because of the vague and general language utilized in said subsection, that it is violative of the constitutional rights of petitioner. It is further contended by petitioner that if any of the seven subsections listed under R.S. 14:103 are unconstitutional, and if a conviction were sustained upon the general law wherein one particular

part of said law is unconstitutional, that the Court, not knowing that the conviction rests upon the unconstitutional part of said law, should sustain petitioner's contention. *Stromberg v. California*, 283 U.S. 359-368. The statute involved in the Stromberg case, being Section 403 (a) of the Penal Code of California, provides:

> "Any person who displays a red flag, banner, or badge or any flag, badge, banner, or device of any color or form whatever in any public place or in any meeting place or public assembly, or from or on any house, building, or window as a sign, symbol or emblem of opposition to organized government or as an invitation or stimulus to anarchistic action or as an aid to propaganda that is of a seditious character is guilty of a felony."

This honorable Court found a portion of said statute to be violative of the Constitutional rights of Stromberg, and since the verdict of the jury was based upon an indictment which tracked the whole statute, and because it was not known whether or not Stromberg was convicted under the unconstitutional part of said statute or not, this Honorable Court remanded the case for further proceedings, not inconsistent with the opinion therein. A reading of the bill of information herein, the judge's per curiam overruling the motion for a directed verdict and the evidence contained in the record will readily reveal that LSA-R.S. 14:103 (7) was not involved, and therefore the Stromberg case, assuming the invalidity of subsection (7) of LSA-R.S. 14:103, is not involved. This Honorable Court in

the case of *Chaplinsky v. State of New Hampshire*, 315 U.S. 769, recognized the rule of law that where a statute has several provisions which are severable, assuming that one provision be unconstitutional, the other, if constitutional and severable, could be sustained. The Court in that particular case accepted the construction of severability and limited to consideration the constitutionality of the statute under consideration in sustaining petitioner's conviction.

CONCLUSION

It is respectfully submitted that this case does not involve an unconstitutional infringement by the local authorities or by the State of Louisiana of the First and Fourteenth Amendments. That this accused was not arrested, tried and convicted for making a speech. That he was charged, tried and convicted for encouraging, leading, aiding and abetting others in obstructing classes in session which was, in effect, the interruption of a lawful assembly of people as set forth under LRS 14:103 (6). That being the aider, abetter, leader and procurer, under the laws of the State of Louisiana, and particularly R.S. 14:24, he is a principal, and as such is as guilty as the doer of the unlawful act. Should this Honorable Court find that this matter is within the realm of the First and Fourteenth Amendments of the United States Constitution, it is submitted that the case of *Irving Feiner, Petitioner v. The People of the State of New York*, 340 U.S. 268, is appropriate and should govern this Court in denying petitioner's application for writs of certiorari. Alter-

natively, should this Honorable Court hold that LSA-R.S. 14:103 in any of its particular sections or subsections to be unconstitutional, it is urged that this Court accept the construction of severability and limit its consideration to the particular subsection which is here involved as shown by the factual and circumstantial averments of the information, and hold R.S. 14:-103, Subsection (6), as being controlling and as being constitutional as against any contention of vagueness. *Chaplinsky v. State of New Hampshire*, 315 U.S. 769.

Respectfully submitted,

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PROOF OF SERVICE

I, Sargent Pitcher, Jr., one of the Attorneys for the State of Louisiana, respondent herein, certify that on the ..... day of April, 1963, I served copies of the foregoing brief of the State of Louisiana in Opposition to Application for Writs of Certiorari to the Louisiana Supreme Court, by mailing the required number of copies, postage prepaid, to Counsel of Record for Petitioners, at the following address:

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Sworn to and subscribed before me, the undersigned Notary Public, within and for the Parish of East Baton Rouge, State of Louisiana, this ..... day of April, 1963.

Notary Public

SUPREME COURT, U. S.
SEP 13 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1963

No. 100

DION TYRONE DIAMOND,

Petitioner,

—v.—

STATE OF LOUISIANA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF FOR PETITIONER

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BRIEF FOR PETITIONER

Opinions Below

The opinions below are not reported. The Nineteenth Judicial District Court for the Parish of East Baton Rouge filed a series of per curiam opinions ruling upon the petitioner's bill of exceptions which were dated November 8, 1962 (R. 27-44).

The Supreme Court of Louisiana entered an order on January 3, 1963 denying the applications for writs of certiorari, mandamus and prohibition (R. 145).

Jurisdiction

The judgment of the Supreme Court of Louisiana was entered January 3, 1963 (R. 145). The petition for certiorari was filed April 3, 1963, and granted May 27, 1963 (R.

150). The jurisdiction of this Court is invoked pursuant to 28 U. S. C. §1257(3), petitioner having asserted below and here the denial of rights, privileges and immunities secured by the Fourteenth Amendment to the Constitution of the United States.

Statutory and Constitutional Provisions Involved

1. This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. This case also involves Louisiana Statutes Annotated, Revised Statutes, Section 14:103, appearing in Volume 9, 1963 Pocket Supplement, p. 54:

§14:103. *Disturbing the peace*

A. Disturbing the peace is the doing of any of the following in such manner as would foreseeably disturb or alarm the public:

(1) Engaging in a fistic encounter; or

(2) Using of any unnecessarily loud, offensive, or insulting language; or

(3) Appearing in an intoxicated condition; or

(4) Engaging in any act in a violent and tumultuous manner by any three or more persons; or

(5) Holding of an unlawful assembly; or

(6) Interruption of any lawful assembly of people; or

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars or imprisoned for not more than ninety days, or both.

B. Any person or persons, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, while in or on the premises of another, whether that of an individual person, a corporation, a partnership, or an association, and on which property any store, restaurant, drug store, sandwich shop, hotel, motel, lunch counter, bowling alley, moving picture theatre or drive-in theatre, barber shop or beauty parlor, or any other lawful business is operated which engages in selling articles of merchandise or services or accommodation to members of the public, or engages generally in business transactions with members of the public, who shall:

(1) prevent or seek to prevent, or interfere or seek to interfere with the owner or operator of such place of business, or his agents or employees, serving or selling food and drink, or either, or rendering service or accommodation, or selling to or showing merchandise to, or otherwise pursuing his lawful occupation or business with customers or prospective customers or other members of the public who may then be in such building, or

(2) prevent or seek to prevent, or interfere or seek to interfere with other persons who are expressly or impliedly invited upon said premises, or with prospective customers coming into or frequenting such premises

in the normal course of the operation of the business conducted and carried on upon said premises, shall be guilty of disorderly conduct and disturbing the peace, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the parish jail for not more than six months, or by both such fine and imprisonment. (As amended Acts 1960, No. 70, §1.)

Question Presented

Whether, where petitioner engaged in making speeches —an activity within the area of free expression protected by the Constitution—he was denied due process under the Fourteenth Amendment when convicted under a state law containing general and indefinite prohibitions against disturbing the peace which are not narrowly drawn to define and prohibit specific conduct?

Statement

Petitioner, Dion T. Diamond, was convicted of the crime of "disturbing the peace" (L. R. S. 14:103) in the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge. Petitioner was charged in that Court by an information (R. 1) filed March 8, 1962, in case No. 42,917 which alleged that on January 30 and 31, 1962, he

> . . . unlawfully did violate L. R. S. 14:103 in that he, not a student of Southern University, did enter upon the premises of Southern University and there engage in and encourage students of Southern University to hold unruly, unauthorized demonstrations on the Campus and did lead and encourage said students to march through the University buildings while classes were being conducted and did encourage said students

> to boycott and leave the classes in such manner as would foreseeably disturb and alarm the public. . . .

Petitioner was arraigned and entered a plea of not guilty on March 8, 1962 (R. 45). On March 12, 1962, the trial court entered an order over petitioner's objection, granting the State's motion to consolidate this case with five separate charges then pending against petitioner[1] (R. 45). At a subsequent proceeding, however, case No. 42,917 was tried separately (*cf.* R. 56) and petitioner was convicted only on this charge. Review here is sought therefore on the conviction of the charge quoted above. Charges of unlawful assembly and of interrupting lawful assemblies which arose out of the same activities of the petitioner during the period January 29 through February 1, 1962, were pending against the petitioner when this case was tried.[2]

Before trial petitioner filed an application for a bill of particulars (R. 14) and a motion to quash the information (R. 4), both of which were overruled (R. 47). Trial was held on May 8, 1962, and petitioner was found "guilty as charged" (R. 44) by the Court sitting without a jury. A motion for new trial (R. 16) was overruled May 24, 1962 (R. 48). In the motion to quash and the motion for new trial petitioner raised federal constitutional objections asserting that the statute as applied to him was unconstitutionally vague and that it violated his rights to free speech and assembly.

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[1] In addition to the above charges, five other informations (R. 7-13) were filed against petitioner. Case No. 42,612 charges petitioner with refusing to leave the premises of Southern University after being requested to do so in violation of L. R. S. 14:103.1; Case No. 42,615 charges petitioner with holding unlawful assemblies, and Case No. 42,616, with interrupting lawful assemblies, both constituting a violation of L. R. S. 14:103. Petitioner is also charged with vagrancy under L. R. S. 14:107 and with trespass under L. R. S. 14:63. See also R. 56.

[2] R. 56, and see note 1, *supra*.

Petitioner was sentenced to pay a fine of $100 and costs, or in default of the fine, to be confined in the parish jail for 30 days, and, in addition, to be confined in the parish jail for 60 days (R. 49).

On November 8, 1962, the trial court filed a series of per curiams to petitioner's bill of exceptions (R. 21-44). Thereafter, petitioner applied to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition seeking to invoke the court's supervisory powers (R. 133). The writs were denied January 3, 1963, in an order by the Supreme Court of Louisiana stating:

> The application is denied. We find no error in the rulings complained of (R. 145).

Execution of the judgment was stayed for 90 days on January 10, 1963, to allow petitioner to seek review in this Court (R. 149).

The events leading to petitioner's arrest were as follows: Southern University in East Baton Rouge Parish, Louisiana is a school having about 4400 students (R. 96). The school had been the scene of a series of demonstrations and meetings by students from December 15, 1961 until the time of petitioner's arrest on February 1, 1962 (R. 74). Some students at Southern were boycotting classes until the situation of students who had been arrested in anti-segregation demonstrations was resolved with the school (R. 97, 99, 100). Dion T. Diamond, who was not a student at Southern University, was first observed on the campus by the State's witnesses (University employees) on January 30, 1962. The evidence at the trial related to a series of speeches made by Diamond to students in a quadrangle on the campus on January 30 and 31, 1962. There was also evidence as to the circumstances of his arrest on February 1, 1962. There was no evidence that petitioner was ever ordered not to

enter the campus, or to leave it; nor was there any evidence that he was ever told that he could not make speeches on the campus or that he needed permission to do so. The University registrar testified that the school was a public institution, and that "anyone may come there who wishes" (R. 56).

1. Events of January 30, 1962

Between 9:30 and 10:00 A.M. on this date, Diamond was observed by Dean of Students Marvin Harvey. Dean Harvey testified that Diamond was addressing three or four hundred students in a quadrangle building near the student union, and "talking about the importance of demonstrating and staying out of classes" (R. 87). Following this meeting, which lasted about fifteen minutes, the students dispersed in various directions (R. 88). The Dean stated that during the speech the students were listening, clapping and indicating "expressions of approval" (R. 88). Dean Harvey further stated that he did not authorize Diamond to hold a meeting (R. 89).

That afternoon at about 1:00, Dean Harvey observed about forty students walking around the campus with signs (R. 89).

2. Events of January 31, 1962—Morning

Diamond made another speech at the same place between 9:15 and 9:45 a.m. before a group estimated by the school's chief security officer William Pass at two to three hundred (R. 60), and estimated by Dean Harvey at four to five hundred (R. 89). Pass stated that this was a regular school day, but that students at the time had been boycotting classes on the campus for three or four days (R. 61-62; 78). In his speech Diamond told the students not to go to classes; that the faculty supported them and had signed

some type of petition; and that they should show their gratitude by not going to classes (R. 62). Dean Harvey said that the tenor of the speech was the same as that of the previous day (R. 90); that he had not authorized the meeting (R. 90); that it lasted between twelve and twenty minutes (R. 90); and that he started toward Diamond to inform him that he did not have permission to hold the meeting, but that Diamond ceased speaking and the group dispersed before he got there (R. 89-90).

3. Events of January 31, 1962—Afternoon

Diamond spoke to another group of students during the noon hour on January 31. Security Officer Pass estimated that there was about the same number or possibly more students at this gathering than at the morning speech (R. 62); his assistant, Willie Harris, estimated that five to six hundred students were assembled (R. 107). Pass stated that "Diamond told the students that we will go through the classrooms and if necessary we will put them out of the classrooms" (R. 63). Harris said that Diamond was pleading for more followers from the student body (R. 110); that he urged the students to stay out of classes and was calling for at least fifty per cent of the students to support him (R. 110); and that Diamond told the students "let's go through the classrooms" (R. 111). Dean Harvey described this speech as "concerned principally [with] the boycotting of classes" (R. 90).

According to Dean Harvey, about one hour after this speech he observed at least one hundred students beginning to go through the classroom building with signs; that this was a noisy procession which disturbed people in the buildings where classes were being conducted at the time; and that this lasted over half an hour (R. 90-91). Mr. Pass said that the students were walking on the campus and through the classrooms singing and stomping in a very loud

manner which caused a disturbance for over an hour (R. 64-65); that they carried signs (R. 64-67); and that classes in progress were disturbed (R. 64-65). His assistant, Harris, also recounted this event, saying that the students were "pulling on doors, stomping on the halls" (R. 110); and that they were disturbing the classes (R. 110). No witness testified that anyone was actually "pulled" from the classroom. Pass testified that no one was injured and that there were no fights (R. 85).

None of the witnesses testified that Diamond did anything but make the speeches mentioned above. No witness testified that Diamond entered any University building. Pass and Harris both stated that they did not see Diamond in any of the buildings (R. 75-76; 110-111). No witness testified that Diamond carried any signs or participated in making them (*cf.* R. 73). On cross examination Pass was asked:

> Q. Now, what did the accused do other than to make a speech? A. That is all I witnessed him doing. He just made a speech (R. 78).

4. Events of January 31, 1962—Evening

At about 6:00 P.M. on January 31, an official meeting of the student senate was held in the "old gymnasium", at which Dean Harvey announced that this was the only authorized student meeting, and the president of the student senate, Murphy Jackson, spoke, urging the students to go to classes. Murphy Jackson testified that Diamond sought permission to speak, and, when this was refused, Diamond, with several other students, left without disturbing the meeting (R. 121). Shortly afterwards, there was an impromptu outdoor gathering outside the "new gymnasium" at which Diamond and a number of students spoke (R. 94-95; 128). Defense witnesses testified that on this occasion

Diamond reprimanded the students for reportedly having gone through the classroom building that afternoon (R. 125, 126, 128-129).

5. Events of February 1, 1962

On the morning of February 1, Diamond arrived on the campus in a taxicab with several other persons (R. 129-130). As soon as he got out of the taxicab he was placed under arrest by the assistant security officer, Willie Harris, who was also a deputy sheriff (R. 72-73, 84, 104). Harris was accompanied by Chief Security Officer Pass who drove Diamond and Harris to the Baton Rouge jail. Pass and Harris testified that on this occasion they merely observed Diamond getting out of the taxicab and that Harris immediately placed Diamond under arrest. Harris had no arrest warrant (R. 104-105). Harris stated that he had wanted to arrest Diamond on the previous day during the noon speech, but had been unable to reach him because of the crowd (R. 109). He stated that he arrested Diamond for "holding an unlawful assembly" the previous day (R. 106); and that no one told him to make the arrest (R. 108). Pass denied having ordered or requested Harris to make the arrest, or having made the arrest himself (R. 83).

ARGUMENT

Petitioner Was Denied Due Process by His Conviction for Making a Series of Speeches Under a Statute Too Vague and Indefinite to Fairly Describe the Conduct Prohibited or to Provide an Ascertainable Standard of Guilt.

Louisiana's case against petitioner is founded upon the content of one or more of the speeches he made to students on the Southern University campus, and not upon a claim that petitioner did anything other than talk. The information charges a series of activities, each of which included a component of speech. Thus, there were allegations that he did "engage in and *encourage* students . . . to hold unruly, unauthorized demonstrations . . . " and did "lead and *encourage* . . . students to march . . . ," and did "*encourage* . . . students to boycott and leave the classes . . . " (R. 1; emphasis supplied). The trial court's description of the evidence which it found sufficient to sustain the conviction referred to petitioner's speeches, and not to any non-verbal conduct (R. 40).[3] The State's Brief in Opposi-

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[3] In ruling upon Bill of Exception No. 7 relating to overruling defendant's motion for a directed verdict, the court described the basis of its finding of guilt as follows (R. 40):

> "The court overruled the motion for the reason that the state, in the opinion of the court, had sustained its burden of proving the guilt of the defendant beyond a reasonable doubt. Reliable, competent evidence offered by the state showed that the defendant, a non-student, was present on the campus of Southern University on the dates alleged in the bill of information, and while there did, in speeches made by him in meetings not authorized by those in charge of such matters, encourage and exhort Southern University students to boycott classes and to march into the classrooms while classes were in session and to disrupt the classes, even to the extent of pulling the students from the classrooms, in such a manner as would foreseeably disturb and alarm the public."

tion to Certiorari, pp. 5-6, urges that petitioner's words made him liable as an abettor of the acts of other students. The conviction could not validly rest on a theory that petitioner did anything other than speak, since clearly there was no evidence that he did anything else (R. 78). Cf. *Thompson* v. *Louisville*, 362 U. S. 199.

Both the information (R. 1) and the trial court's per curiam No. 7 (R. 40) make it clear that a part of the basis for petitioner's conviction was his advocacy of a boycott of classes at Southern University. The conviction does not rest only on the charge that petitioner urged students to march around and disrupt classes. It also rests on his advocacy that students voluntarily attending a public University refuse to attend classes to protest the treatment of students arrested for taking part in antisegregation demonstrations (R. 97-99). Such speech on a social issue of public importance is within the bounds of lawful advocacy. "Abstract discussion is not the only species of communication which the Constitution protects". *NAACP* v. *Button*, 371 U. S. 415, 429. There is "a right to persuade to action, not merely to describe facts". *Thomas* v. *Collins*, 323 U. S. 516, 537. But even if it might validly be prohibited by a state, it surely cannot be controlled by a vague and general law which does not indicate a legislative determination that such speech creates a clear and present danger to some legitimate state interest. *Cantwell* v. *Connecticut*, 310 U. S. 296, 311.

Given the application of LSA-R.S. 14:103 to conduct within the area of free speech and expression, petitioner's due process vagueness claim must be appraised in the light of the specially strict standards of statutory specificity applicable to laws "having a potentially inhibiting effect on speech." *Smith* v. *California*, 361 U. S. 147, 151; *NAACP* v. *Button*, 371 U. S. 415, 432, and cases cited; cf. *United*

States v. *National Dairy Prod. Corp.*, 327 U. S. 29, 36. The application of the vagueness doctrine as a means of providing "clearance space for individual freedoms," [4] is exemplified by the *Button* case, *supra*, where the Court said:

> Because First Amendment Freedoms need breathing space to survive, government may regulate in the area only with narrow specificity. Cantwell v. Connecticut, 310 U. S. 296, 311 (371 U. S. at 433).

The stifling effect vague laws have on the right of free expression has led the Court to say that "Broad prophylactic rules in the area of free expression are suspect" and that "Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms." *NAACP* v. *Button*, 371 U. S. 415, 438. See *Edwards* v. *South Carolina*, 372 U. S. 229; *Wright* v. *Georgia*, 373 U. S. 284; *Cantwell* v. *Connecticut*, 310 U. S. 296.

Petitioner submits that he was tried and convicted under subsection A(7) of §14:103, prohibiting the "Commission of any other act in such a manner as to unreasonably disturb or alarm the public," and that this provision is too vague and indefinite to be applied to conduct within the area of free speech. Although neither the prosecutor nor the trial court expressly stated in the courts below which subsection of the law was relied upon to support the charge and conviction, a variety of factors support petitioner's assertion that it was subsection A(7). This is true notwithstanding the unsubstantiated claim made for the first time by the State in this Court that the conviction rests upon subsection A(6) prohibiting the "interruption of any lawful assembly of people." The factors indicating that petitioner was tried under subsection A(7) require some explanation.

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[4] See Amsterdam, Note, The Void-For-Vagueness Doctrine, 109 U. Pa. L. Rev. 67, 75-85 (1960).

First, the information itself alleges a series of acts by petitioner, none of which, either separately or when read together, come within the terms of subsections A(1) to (6). Subsection A(6) now relied on by the State prohibits an "interruption" of a lawful assembly, but no such "interruption" is alleged in the information. It alleged that petitioner "did lead and encourage students to march through the University building while classes were being conducted," but did not allege that classes were "interrupted." The natural inference from the fact that none of the acts specified in subsections A(1) to (6) are mentioned, is that the information was intended to invoke subsection A(7), the catch-all provision applying to "any other act."

Secondly, petitioner filed a motion for new trial saying that he had not engaged "in any activity that had been denounced as a crime by LSA-R.S. 14:103(7) of 1950, as amended, the statute under which the defendant is charged" (R. 16). In overruling this motion the trial court said nothing to contradict petitioner's assumption that subsection 7 was the provision involved (R. 43). And, in ruling on petitioner's vagueness claim (made in the motion to quash without mention of subsection 7 (R. 4-5)), the Court's opinion discussed subsection 7 and cited decisions upholding it as sufficiently definite (R. 28-29). Petitioner also argued in the Louisiana Supreme Court that he was convicted under subsection 7, but that Court affirmed without discussion (R. 134, 136, 142).

Thirdly, the trial court and the parties were aware of the fact that a separate information against petitioner under Section 14:103, which used the words of subsection 6 (R. 12), was pending at the time of the trial (R. 56-57). This charge had not been abandoned by the prosecutor who took pains to obtain a stipulation that testimony of a witness in this trial could be used at any subsequent trial of

the charge of interrupting a lawful assembly (Case No. 42,616) (R. 56-57).

Fourthly, the notion that the trial court conceived the case as one under subsection 6, based on a theory that petitioner was liable for interrupting classes by counselling others who actually did this, is entirely inconsistent with statements made by the Court in a long colloquy with counsel during the trial (R. 100-102) and in a per curiam (R. 38-39). For example, the Court said, "Whether they were responsive to his exhortations makes no difference" (R. 100), and "it wouldn't have to follow that there was actually boycotting or that there was actual demonstrating as long as he urged it. . . ." And, subsequently:

> Now what I am saying is whether the doings or the actions of the accused did actually create a turmoil and disturbance is something else again, it is not necessary to prove that. It is just like if somebody is using obscene language or engaging in a fight in public that is calculated to alarm and disturb the peace. Actually you might have some hardened souls standing around there who wouldn't be disturbed at all (R. 101-102).

And again at R. 102:

> . . . but when he made speeches advocating the boycotting of classes, he is presumed by law to know that very probably that very thing that he is advocating is going to follow, and it is a consequence of his actions, but I am not saying it is absolutely necessary to show the consequences, but it is admissible.

Thus, the Court quite clearly regarded the mere advocacy of boycotting, without regard to the effect on others as basis for conviction; the per curiam expresses this same theory (R. 38-39). This theory is much more likely to have

been founded on subsection 7 forbidding "any other act in such a manner as to unreasonably disturb or alarm the public," than upon subsection 6 which could apply to mere advocacy of a boycott only by a fiat of construction ignoring the natural tendency of its words to refer to an *actual* interruption of an assembly.

Thus, all of the things in the record which do tend to indicate that any particular part of the law was the basis for the charge and conviction point to subsection 7 and not to subsection 6. (One possible exception points to subsection 5, e.g., a statement by the arresting officer that he arrested Mr. Diamond for "Holding an unlawful assembly" (R. 106). The State does not rely upon subsection 5 in the Brief in Opposition to Certiorari).

Assuming that the conviction is based upon subsection 7, it is clear that it must fail as a denial of due process, because this provision is so general and sweeping, and could cover such a wide variety of speech, both within and without the area of lawful advocacy, that it fails to define any crime, leaving the task of definition for the tribunal deciding a particular case. This Court had occasion to consider an earlier claim that subsection 7 was unconstitutionally vague, but did not find it necessary to decide the issue. *Garner* v. *Louisiana*, 368 U. S. 157, 165, note 13. Mr. Justice Harlan's concurring opinion in *Garner, supra*, at 368 U. S. 205-207, did view this subsection as unconstitutionally vague as applied to punish speech or expression, relying upon *Cantwell* v. *Connecticut*, 310 U. S. 296. Mr. Justice Harlan wrote (368 U. S. at 207):

> For the statute by its terms appears to be as applicable to "incidents fairly within the protection of the guarantee of free speech," Winters v. New York, supra (333 U. S. at 509), as to that which is not within the range of such protection. Hence such a law gives no

warning as to what may fairly be deemed to be within its compass. See Note, 109 U of Pa L Rev 67, 75-76, 99-104 (1960).

In this case (R. 28-29), as in *Garner, supra*, the Louisiana courts have referred only to the definition of disturbing the peace given in an earlier case (*Ponchatoula* v. *Bates*, 173 La. 824, 827, 138 So. 851, 852) where it was said to include "any act or conduct of a person which molests the inhabitants in the enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary normal temperament." To support its holding on the vagueness issue, the trial court even relied upon the Louisiana Supreme Court's ruling in *Garner* and its companion cases—without observing that it was reversed here on other grounds (R. 29). It is obvious, then, that this case does involve a vague and generalized conception of "disturbing the peace"; that the law has not been limited by construction;[5] and that the law is applied here as it was in *Garner* to conduct within the area of speech and expression. This Court's opinions teach that such convictions deny due process. *Cantwell* v. *Connecticut, supra; Thornhill* v. *Alabama*, 310 U. S. 88, 105; *Terminiello* v. *Chicago*, 337 U. S. 1; *Edwards* v. *South Carolina*, 372 U. S. 229.

It has been asserted above that the convictions rest on subsection 7. Whatever doubt is cast on this proposition by the state's claim in this Court that the case rests on subsection 6 cannot save the conviction. For at best the state's theory cannot entirely remove the possibility that the trial court decided the case on the theory that the conviction was

[5] The Louisiana Supreme Court itself questioned the validity of an earlier general "disturbing the peace" law applied to religious expression in *State* v. *Sanford*, 203 La. 961, 14 So. 2d 778.

proper, at least in part, under subsection 7. *Stromberg* v. *California*, 283 U. S. 359, makes it clear that where the possibility that a conviction rests on an unconstitutionally vague portion of a law cannot be excluded, the conviction cannot be allowed to stand on the theory that it *might* rest on another portion of the law not subject to the same infirmity. In *Stromberg* a conviction under a general verdict, which failed to specify which of three statutory clauses supported it, was reversed where one of those clauses was unconstitutionally vague. The Court said that "if any of the clauses in question is invalid under the Federal Constitution, the conviction cannot be upheld" (283 U. S. at 368). The principle has been frequently applied in other cases. *Terminiello* v. *Chicago*, 337 U. S. 1, 5, rests on this doctrine. So do *Williams* v. *North Carolina*, 317 U. S. 387, 292, and *Thomas* v. *Collins*, 323 U. S. 516, 528-529. See also *Cramer* v. *United States*, 325 U. S. 1, 36, note 45; *Yates* v. *United States*, 354 U. S. 298, 312. Cf. *Sunkist Growers* v. *Winckler & Smith Co.*, 370 U. S. 19, 29-30, applying an analogous principle in a civil case. *Thomas* v. *Collins*, 323 U. S. 516, was a non-jury criminal contempt case, demonstrating that the absence of a jury does not affect the vitality of the *Stromberg* principle. In *Thomas*, the court held that where a defendant had been convicted of contempt on a general finding of guilt that made no distinction between a charge that he solicited a specific individual to join a union and a charge that he urged that an entire audience join the union, the judgment "must be affirmed as to both or as to neither" (323 U. S. at 528-529). In *Terminiello*, *supra* (337 U. S. at 5), one instruction to the jury (to which no specific objection was made) embraced an unconstitutional theory which might have been the basis of the jury's verdict; *Stromberg* was held to be controlling. *Stromberg*, should control this case as well since it is plainly possible, and indeed it is very probable,

that the unconstitutionally vague subsection 7, was considered by the trial court in whole or in part to justify the conviction.

The state's arguments that the several subsections of the statute are severable is quite beside the point. Severability would be relevant if petitioner complained of several separate convictions, each under a different portion of the law. But, it has no bearing on the application of the *Stromberg* principle to this case.

Indeed, *Stromberg* and *Thomas* v. *Collins*, 323 U. S. 516, furnish a rule that compels reversal of the petitioner's conviction even if complete acceptance is given to the state's position that the conviction rests only upon subsection 6 (relating to interruption of a lawful assembly) and subsection 7 is disregarded entirely. This is true because the conviction rests upon several alleged acts, at least one of which this statute plainly fails to warn against.[6] If the information does, as the state contends, charge a crime under the clause prohibiting "interruption of any lawful assembly", that charge embraces each of the acts mentioned in the information, i.e. (1) engaging in and encouraging students to hold unruly, unauthorized demonstrations, *and* (2) leading and encouraging students to march through University buildings while classes were being conducted, *and* (3) encouraging students to boycott and leave the classes; all "in such manner as would foreseeably disturb and alarm the public". The trial court made clear that the evidence that petitioner engaged in encouraging students to boycott and leave classes formed a part of the basis for the conviction *in addition to* the evidence which the court held proved that petitioner urged students

[6] In *Thomas* v. *Collins*, 323 U. S. 516, the court held that where a single conviction rested on two acts, and one act was constitutionally protected, the conviction must fall.

to march into the classroom buildings and disrupt the classes. This finding appears at R. 40:

> Reliable, competent evidence offered by the state showed that the defendant, a non-student, was present on the campus of Southern University on the dates alleged in the bill of information, and while there did, in speeches made by him in meetings not authorized by those in charge of such matters, *encourage and exhort Southern students to boycott classes and to march into the classrooms* while classes were in session and to disrupt the classes, even to the extent of pulling the students from the classrooms, in such a manner as would foreseeably disturb or alarm the public (emphasis added).

That encouragement of a boycott was at least a part of the basis of petitioner's conviction is further reinforced by the fact that such encouragement was the only act charged common to both days cited in the information.

The conviction must fail because nothing in subsection 6 (or any other part of §14:103)[7] warns that encouraging students to boycott classes is punishable as disturbing the peace. It is no answer to say, as Louisiana does, that petitioner was convicted for counseling others to commit a crime, for his conviction also rests on his mere advocacy of a boycott. Certainly nothing in §14:103A(6) evinces any legislative determination that for a person to urge state college students voluntarily attending school to boycott classes is a type of speech that the state cannot and will not tolerate. Such a law, expressly prohibiting this advocacy would in petitioner's view represent the type of state imposition of orthodoxy in speech and thought which the First Amendment strikes down. Whatever the resolu-

[7] This reasoning applies equally to subsection 7. See page 12, *supra*.

tion of that issue might be, it seems clear that a vague criminal law cannot be used to suppress and punish the expression of such views. The unfairness resulting from the failure of subsection 6 to warn that the advocacy of a boycott is prohibited is accentuated by the possibility that the trial judge based his judgment upon the theory which he expressed orally during the trial (R. 101-102), and in an opinion written later (R. 39), e.g. that *mere advocacy* of such a boycott (without regard to the consequence of the advocacy) was punishable under the statute. The Court's expressed indifference on the question of whether petitioner's advocacy caused the student march (which occurred about an hour after his speech), is further indicated by the fact that the Court did not mention causation in describing the evidence thought to sustain the charge (R. 40). Of course, subsection 6 gives no warning at all that it is subject to such an interpretation which would require it to punish advocacy of interruptions of lawful assemblies whether the interruptions actually take place or not. Each of the subsections of §14:103A relates back to prefatory language concerning "doing any of the following in such manner as would foreseeably disturb or alarm the public". It is, of course, very strange indeed to speak of the foreseeability of that which never happened; but the trial court's construction of the statute would require such a concept. The direct effect of the ruling was to deny petitioner an opportunity to show that his speech did not cause the student demonstrations (R. 38-39; 100-102).

The language in the prefatory clause of §14:103A, requiring that all the acts be done "in such a manner as would foreseeably disturb or alarm the public", does nothing to make any of the subsections clearer. Indeed the notion of punishing disturbing or alarming speech runs contrary to the First Amendment. *Terminiello* v. *Chicago*, 337 U. S. 1, 4-5.

Petitioner's submission then is that the unfair vagueness of the statute under which he was charged and convicted is demonstrable whatever view is taken on the issue as to which provision of §14:103 was the basis of the conviction. This vague law is not only unfair to petitioner because its inexplicit command threatens his right of free speech in advance. It also works unfairly against him after he has spoken; he cannot know how to defend himself against a charge of violating §14:103 because the statute contains nothing to indicate what he might prove or what allegations he might disprove in order to escape the prohibitions of the law. The fact that the information did allege certain acts alleged to constitute the crime cannot cure the vagueness of the statute. As the Court observed in *Lanzetta* v. *New Jersey*, 306 U. S. 451, 453:

> If on its face the challenged provision is repugnant to the due process clause, specification of details of the offense intended to be charged would not serve to validate it. Cf. United States v. Reese, 92 U. S. 214, 221; Czarra v. Medical Supers., 25 App. D. C. 443, 453. *It is the statute, not the accusation under it, that prescribes the rule to govern conduct and warns against transgression.* See Stromberg v. California, 283 U. S. 359, 368; Lovell v. Griffin, 303 U. S. 444. (Emphasis added.)

Indeed, the vagueness of §14:103 subjects petitioner to substantially the same evils denounced in *Russell* v. *United States*, 369 U. S. 749 (where the Court reversed convictions based upon a vague indictment), and in *Cole* v. *Arkansas*, 333 U. S. 196 (where the court reversed convictions under a statute the accused was not charged with, or tried for, violating). In *Russell, supra*, the Court noted that a vague indictment "requires the defendant to go to trial with the chief issue undefined", "enables his con-

viction to rest on one point and the affirmance . . . on another", and "gives the prosecution free hand on appeal to fill in the gaps of proof by surmise or conjecture". The resemblance between the present case and the *Russell* case is strengthened by the fact that the accusation against petitioner failed to indicate which of the many different crimes embraced by §14:103 was charged.[8] But, the vices of this vague law, similar to those noted in *Russell,* would be present even if the subsection invoked by the state had been mentioned in the indictment. *Cole* v. *Arkansas,* 333 U. S. 196, 201, rests on the fundamental proposition "that notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge, if desired, are among the constitutional rights of every accused in a criminal proceeding in all courts, state or federal." Petitioner Diamond, was as much deprived of notice of the charge against him—both because of the vagueness of §14:103 and because he was not told which subsection was invoked against him—as Cole was when he was convicted of a charge on which he was never tried. Indeed, Diamond cannot even know whether or not he was convicted of the charge on which he was tried, or what that charge was.

[8] Recognizing that §14:103 includes many different offenses, gathered together from various parts of earlier codes, the Louisiana Supreme Court has held that indictments failing to indicate which offense is charged are defective. *State* v. *Morgan,* 204 La. 439, 15 So. 2d 866 (1943); cf. *State* v. *Verdin,* 192 La. 275, 187 So. 668 (1939).

CONCLUSION

It is respectfully submitted that for the foregoing reasons the judgment below should be reversed.

Respectfully submitted,

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No. 100

In the Supreme Court of the United States

DION TYRONE DIAMOND,

Petitioner,

v.

STATE OF LOUISIANA,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Louisiana

BRIEF FOR RESPONDENT

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No. 100

In the Supreme Court of the United States

DION TYRONE DIAMOND,

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v.

STATE OF LOUISIANA,

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On Writ of Certiorari to the Supreme Court of the State of Louisiana

BRIEF FOR RESPONDENT

ARGUMENT

IN ALL CRIMINAL PROSECUTIONS, THE ACCUSED SHALL BE INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM. (Constitution 1921, Art. 1, Sec. 10, Louisiana Constitution)

In view of the above-cited constitutional article, the Louisiana Legislature has provided in LSA-R.S. 14:227, as follows:

> "The indictment must state every fact and circumstance necessary to constitute the offense, but it need do no more, and it is immaterial whether the language of the statute creating the offense, or words unequivocally conveying the meaning of the statute, be used."

18 USC, Rule 7C, the federal counterpart of the foregoing-cited Louisiana statute, states:

> "The indictment or the information shall be a plain, concise and definite written statement of the essential facts constituting the offense charge . . ."

Further quoting the foregoing provision:

> ". . . Error in the citation or its ommission shall not be ground for dismissal of the indictment or information or for reversal of a conviction if the error or omission did not mislead the defendant to his prejudice."

> "The statute on which an indictment is found ed must be determined from the facts charged in the indictment and the facts, as pleaded, must bring the offense charged within one statute although another statute is referred to in the indictment." *Masi v. U.S.*, C.A. Fla. 1955, 223 Fed. 2nd 132, Certiorari denied 76 Sup. Ct. 208, 350 U.S. 919, 100 L. Ed. 805; *U.S. v. McKnight*, C.A., New York 1958, 253 Fed. 2d 817.

> "An indictment need not show upon which statute it is based." *Bugg v. U.S.*, Circuit Ct. of Appeals, Mo. 1944, 140 Fed. 2d 848, Certiorari denied, 65 Sup. Ct. 89, 323 U.S. 673, 89 L. Ed. 547.

Thus, from the foregoing authorities, federal and state, it is contended that the validity with reference to the averments of the bill of information are to be determined by the factual averments therein, and that nothing else is required; but that, factually, the averments amount to a violation of some statute. A reading of LSA-R.S. 14:103 and the bill of information herein

filed and upon which this prosecution was based will readily inform anyone what section or sections of LSA-R.S. 14:103 the factual averments of this bill of information fall within. Petitioner's complaint that the particular section or sub-section is not set forth in the bill of information is of no con equence. A reading of LSA-R.S. 14:03 (A) 1-7, and a reading of the bill of information herein filed against petitioner, factually, circumstantially and expressly reveals that petitioner was charged with the violation of R. S. 14:103 (a) 5 and 6, and a reference to the transcript will readily reveal that the evidence overwhelmingly supports violations by petitioner of these two particular sections.

THE DISTRICT ATTORNEY, IF REQUESTED BY THE ACCUSED PRIOR TO ARRAIGNMENT MAY BE REQUIRED BY THE JUDGE TO FURNISH A BILL OF PARTICULARS SETTING UP MORE SPECIFICALLY THE NATURE OF THE OFFENSE CHARGED. R.S. 15:235 (last paragraph).

Although petitioner filed an application for a bill of particulars, (R-14), the information that he sought therein was information of evidentiary nature to which he was clearly not entitled. It is to be noted that in said application, petitioner did not request that he be furnished with the citation of the statute under which he was charged. 18 USC, Rule 7 (F), the federal counterpart of R. S. 15:235, provides:

> "The court for cause may direct the filing of a bill of particulars. A motion for a bill of particulars may be made only within ten days after arraignment or at such other time before or after

arraignment as may be prescribed by rule or order. . ."

The rule or order of the state courts of Louisiana is provided for in the last paragraph of R. S.-LSA 15:235 to the effect that an application for a bill of particulars must be requested by the accused prior to arraignment. The record in this case will clearly show that this accused not only failed to seek the citation of the laws allegedly violated and for which he was charged prior to arraignment, but at no time did he ever request said information. Further, as previously discussed, had he sought said information, both under state and federal authority, he would not have been entitled to it.

ALL PERSONS CONCERNED IN THE COMMISSION OF A CRIME, WHETHER PRESENT OR ABSENT, AND WHETHER THEY DIRECTLY COMMIT THE ACT CONSTITUTING THE OFFENSE, AID AND ABET IN ITS COMMISSION, OR DIRECTLY OR INDIRECTLY COUNSEL OR PROCURE ANOTHER TO COMMIT THE CRIME, ARE PRINCIPALS. (LSA-R.S. 14:24)

The federal counterpart to the foregoing, 18 USC 2 (a) provides:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal."

Subsection (b) thereof further provides:

"Whoever willfully causes an act to be done which

> if directly performed by him or another would be an offense against the United States, is punishable as a principal."

A reading of the bill of information herein, it is submitted, will put anyone on notice that petitioner was charged by said bill of information under these foregoing sections, that is, as the aider, abettor, procurer or leader of the allegedly unlawful activities therein set forth.

There is no evidence in the record to refute the events of the afternoon of January 31, 1962, as set forth in petitioner's brief at page 8 filed herein. At that time, a particular meeting in session was comprised of an estimated five hundred to six hundred students (R-107). Diamond, the petitioner, was speaking to the students and told them to go through the classrooms and, if necessary, to pull the students out of the classrooms (R-63). Petitioner was pleading for more followers from the student body (R-110). He told the audience, and urged them, to go through the classrooms (R-111). Shortly thereafter, at least one hundred students began to go through the classrooms with signs. This was a noisy procession which disturbed the people in the buildings where classes were being held at that time. This noisy procession and disturbance lasted over half an hour (R-91). This noisy procession disturbed classes in progress (R-64, 65). The students at that time were pulling on doors, stomping in the halls and were disturbing the classes in session (R-110). It is not denied or refuted that petitioner, as the speaker at this demonstration and

meeting, urged and encouraged and directed his followers to go into these classrooms and, if necessary, pull the students in class therefrom and that, immediately after this speech, the students did exactly what their leader, petitioner herein, urged and encouraged and instructed them to do, that is, to march through these buildings and classrooms in which classes were being conducted, in a noisy manner, disturbing same. Petitioner takes the position that he was denied due process by this conviction for making a series of speeches under a statute too vague and indefinite to fairly described the conduct prohibited or to provide an ascertainable standard of guilt. He contends in his brief that he was tried and convicted for merely making a speech and for lawfully advocating therein. In support of the foregoing contentions, he cites *Thompson v. Collins*, 323 U.S. 516 and *Cantwell v. Connecticut*, 310 U.S. 296. A factual history of these two cited cases will reveal that the holdings thereon have no application to the case at bar.

In *Thompson v. Collins*, a Texas law was involved which required union labor organizers to register with the Secretary of State and secure a card in order to solicit union membership. This Honorable Court restrained the enforcement of the provisions of that particular law, holding it was violative of the rights of a person to peacefully assemble and to advocate union membership, which this Court held to be a wholly lawful purpose. The Court, in that case, specifically found that there was no tendency to incite to unlawful action, nor were there any elements of present, clear

and immediate danger to public order and welfare. It will thus be appreciated from *Thompson v. Collins* that the assembly was peaceful and that the advocacy of unionism was a lawful one. *Cantwell v. Connecticut* involved two Jehovah Witnesses who were playing records to pedestrians with their permission and consent. This court found that they only wished to interest others in their propaganda. It found rights on the part of these Jehovah Witnesses to peacefully import their news. This Court found no showing that this deportment was noisy, overbearing or offensive. There was no crowd, disturbance or any impediment of traffic, and in effect, the Court found no invasion of the rights of the public or of the two pedestrians accosted. In Cantwell, this Court appropriately said:

> "No one would have the hardihood to suggest that the principal of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect . . . Where clear and present danger of riot, disorder, interference with traffic, upon the public streets, or other immediate threat to public safety, peace, or order, appears, the power of the state to present or punish is obvious . . ."

This Honorable Court, in *Cantwell v. Connecticut*, recognized the concepts inherent in the first and fourteenth amendments as being the freedom to believe which this Court found to be absolute, and the freedom to act, which this Court found not to be absolute and to be restricted and limited to conduct that was subject to regulation for the protection of society.

Petitioner further cites the case of *Thompson v. Louisville*, 362 U.S. 199. In that case, the accused was charged with vagrancy under a Kentucky statute, the elements of which were that he had no visible means of support or satisfactory explanation of his presence, and that he did sleep, like, loaf or trespass on the premises in question without the consent of the owner thereof. The evidence in that case showed that there was no objection from the manager of the premises, although this accused had been in this particular cafe, the premises concerned, for over one-half hour. This Court held that the record was completely devoid of evidentiary support of this particular charge and, therefore, the conviction was violative of the due process clause of the Fourteenth Amendment. Respondent respectfully suggest that *Thompson v. Louisville* has no application to the case at bar.

The petitioner also cites in his petition the case of *Smith v. California*, 361 U. S. 147, 371 U. S. 415, in which case an ordinance dispensing with the element of scienter or knowledge by a bookseller of the contents of his books was held unconstitutional as placing too great a restriction upon the expression of a citizen. Respondent fails to see how the holding in this particular case, with reference to the facts under consideration, would have any bearing on the case at bar.

In arguing the alleged vagueness of LSA-R.S. 14:-103, petitioner cites the case of *Russell v. U. S.*, 369 U.S. 749. This case dealt with the refusal of a witness

to answer questions before a congressional committee. The indictment therein failed to identify and set forth the subject matter under inquiry at the time of the questioning, which was an essential element of the offense charged in the case. This Court properly held the bill of indictment insufficient in neglecting to aver that one particular essential element of the offense charged. Respondent fails to see how this particular case and the finding therein are appropriate to the case at bar.

SEVERAL DISTINCT OFFENSES, OR THE INTENT NECESSARY TO CONSTITUTE SUCH OFFENSES, DISJUNCTIVELY ENUMERATED IN THE SAME LAW OR IN THE SAME SECTION OF A CRIMINAL STATUTE, MAY BE CUMULATED IN THE SAME COUNT, WHEN IT APPEARS THAT THEY ARE CONNECTED WITH THE SAME TRANSACTION AND CONSTITUTE BUT ONE ACT, BUT IN THAT EVENT THEY MUST BE CHARGED CONJUNCTIVELY. (LSA-R.S. 15:-222)

18 USC, Rule 7 C, in part thereof, speaking of the bill of information, with reference to its nature and contents, provides:

> ". . . It may be alleged in a single count that the means by which the defendant committed the offense are unknown or that he committed it by one or more specified means . . ."

With the foregoing in view, this Honorable Court has held that if a statute embraces several separate

and distinct acts as a crime, an information or indictment in the language of the statute alleging more than one of the statutory offenses, is not duplicitous, if pleaded in the conjunctive. *Kitchens v. U. S.*, Ct. App. Wyoming 1959, 272 Fed. 2d 757, Certiorari denied, 80 Sup. Ct. 809, 362 U.S. 946, 4L. Ed. 2d 772. In view of the foregoing authorities, both state and federal, it will thus be readily seen that LSA-R.S. 14:-103, disturbing the peace, sets forth several separate and distinct acts by which said offense may be violated in the disjunctive and that the bill of information, conjunctively, factually and circumstantially charged a violation of subsections five and six thereof, which is permissible in view of the foregoing authorities. Despite the language contained in the bill of information which readily answers any questions as to what particular sections of LSA-R.S. 14·103 are violated, this petitioner maintains that this prosecution is based under LSA-R.S. 14:103(a) (7). In order to maintain that contention, it is necessary to completely ignore the factual averments of the bill of information in the light of LSA-R.S. 14:103. In order to sustain this contention, petitioner calls attention to mention of that alleged fact, that is, that this prosecution is under LSA-R.S. 14:103, in pleadings which he filed in various motions during the progress of this trial, which amount to nothing more than self-serving allegations which are in direct contradiction to the averments of the bill of information.

Petitioner contends further that he knew not

under what section of LSA-R.S. 14:103 he was charged and tried. A reading of the bill of information and transcript in this case would readily refute such contention. He further contends that he was tried and convicted among other sections, under LSA-R.S. 14:103 (a) (7), which he alleges to be unconstitutionally vague and citing *Stromberg v. California*, 283 U.S. 359, he urges that the whole proceedings should be nullified. This Honorable Court found that part of Section 403 A of the Penal Code of California, which was involved in Stromberg, was unconstitutional, although there were other parts which were connected therewith disjunctively which were valid. The Court, in the Stromberg case, found that the trial court in instructing the jury informed them that they could find the defendant guilty of either or any part of the general charge, which was conjunctively phrased. This Honorable Court found the judge's charge to the jury objectionable under a general verdict of guilty because it was not known whether the jury had found the defendant guilty under the unconstitutional part of said law or not. In the case at bar, the Stromberg case is inappropriate for the simple reason that the bill of information conjunctively charged this petitioner, and for the further reason that there is no indication that the judge, in considering the evidence and in arriving at his verdict, treated the bill of information disjunctively. As a matter of fact, the trial judge considered the bill of information as conjunctively charged. (See Transcript 28) Petitioner further contends that the statute under which

he was charged and prosecuted is unconstitutionally vague in that it does not fairly describe the conduct prohibited or provide an ascertainable standard of guilt, and therefore, is violative of the due process clause of the Fourteenth Amendment. This Honorable Court has held that a statute prohibiting the printing, publishing, editing, issuing, circulating, selling, etc., any books, papers, documents, encouraging or inciting a crime or breach of the peace or having the tendency to do so, valid as against a similar contention. *Fox v. Washington*, 236 U.S. 273, 35 Sup. Ct. 383, 59 Law Ed. 57.

Chaplinsky v. New Hampshire, 315 U. S. 568 held that Chapter 378, Section 2, of the Public Laws of New Hampshire, which reads as follows:

> ". . . No person shall address any offensive, derisive, or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name . . ."

constitutional as against a similar contention of vagueness. Also, this Honorable Court, in the case of *Irving Feiner, petitioner, v. The People of the State of New York*, 340 U.S. 268, at page 355 of this Court's decision, held that the New York Penal Law, Paragraph 722, which provides as follows:

> "Any person who, with the intent to provoke a breach of the peace, or whereby a breach of the peace may be occasioned, commits any of the following acts shall have been deemed to have committed the offense of disorderly conduct:
>
> (1) . . .

(2) Acts in such a manner as to annoy, disturb, interfere with, obstruct or be offensive to others . . ."

was valid as against the contention of generality and violative of the First and Fourteenth Amendments of the United States Constitution.

SPEECH WHICH TENDS TO INFLICT INJURY OR WHICH INCITES TO RIOT OR IMMEDIATE BREACH OF THE PEACE IS NOT PROTECTED BY THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION. (*People v. Feiner*, 1950, 91 NE 2d. 316, 300 N. Y. 391) *Chaplinsky v. State of New Hampshire*, 315 U. S. 568.

The evidence shows that petitioner told the students "let's go through the classrooms," (R-111) and also told them "we will go through the classrooms and, if necessary, we will pull them out of the classrooms" (R-63). The foregoing language by petitioner was to encourage his audience, students of Southern University, to be divided with other students who were attending Classes. He was urging a division in hostile camps. The speech was a deliberate, agitated and goaded effort to urge the crowd to action. Such language, in substance, in *State v. Feiner*, was held to be unprotected by the first amendment. Substantially, these were fighting words which not only tended to inflict injury and incite an immediate breach of the peace, but which actually did result in that action by the crowd. *Chaplinsky v. State of New Hampshire, supra.*

CONCLUSION

On review, this honorable Court looks at the whole proceedings below and determines independently the validity of petitioner's contentions in the light of the alleged constitutional rights violated. *Garner v. La.*, 368 U.S. 157. Petitioner in an effort to have his conviction reversed is urging this Honorable Court to view certain isolated remarks made by the trial judge during the course of the trial and isolated averments made by him in various pleadings filed in this proceeding, out of context. It is respectfully submitted that petitioner's conviction should be sustained on the basis of several sound, legal principles.

First, the speech he made had the tendency to, and actually did, urge others to riot, to a breach of the peace or a disturbance of the peace, by the conduct of the interruption of the classrooms in session. The words he used in the speech, regardless of the purpose of the speech, were fighting words and words that tended to create the crime with which he is charged.

Secondly, petitioner exhorted, encouraged, directed, urged and led some five hundred students to hold an unlawful assembly and to march through classes in session, all of which completely disrupted these lawful assemblies. His alleged advocacy was unlawful. It tended to incite others to riot, and did in fact, do so. The result was the disruption and interruption of classes in session by his marching demonstrator-audience, a result of which, as the procurer, he is as re-

sponsible as the doers. *Scherman v. State*, 115 Neb. 109, 112; 211 N. W. 613.

Thirdly, the right of the State to factually, circumstantially and conjunctively charge and try petitioner, in one count, on more than one factual violation of R.S. 14:103 has been established as being legally valid. R.S. 15:222, 18 USC, Rule 7.

Fourth, although it is true that the bill of information herein filed, upon which petitioner was charged and tried, contains averments of several factual violations of R.S. 14:103, they are properly conjunctively joined. Should this conviction be affirmed, petitioner should have no complaints for the State of Louisiana has only one opportunity to prosecute on this single transaction and, although in such prosecution, the state may, as it did in this case, join other charges based on the same factual situation, it may not have a succession of trials, seria tim. *U.S. v. Sabella*, Ct. of Appeals New York, 1959, 272 Fed. 2d 206.

The constitutional rights against double jeopardy guaranteed to this accused by the Fifth Amendment of the United States Constitution will protect him, if found guilty herein, of another prosecution under R.S. 14:103 on any conduct which may have arisen out of the general conduct in question, if evidence in the second trial would have been sufficient to warrant the conviction herein. *U.S. v. Kramer*, Ct. of App New York, 1961, 289 Fed. 2d 909.

For the reasons hereinabove contained, it is respectfully submitted the conviction herein should be sustained.

Respectfully submitted,

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